The Speaker of Dewan Undangan Negeri of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v Ting Tiong Choon & Ors and other appeals

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 01(f)-20–08 OF 2019(Q), 01(f)-21–08 OF 2019(Q) AND 02(f)-65–08 OF 2019(Q)
TENGKU MAIMUN CHIEF JUSTICE, ROHANA YUSUF PCA, DAVID WONG CJ (SABAH AND SARAWAK), ZAWAWI SALLEH, NALLINI PATHMANATHAN, VERNON ONG, ABDUL RAHMAN SEBLI, ZABARIAH YUSOF, HASNAH HASHIM FCJJ
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Constitutional Law — Legislature — State Legislative Assembly — Sarawak State Legislative Assembly ('Dewan') disqualified assemblyman from being member of Dewan on ground he acquired foreign citizenship before his election to the Dewan — Whether Dewan acted within its jurisdiction — Whether art 17(1)(g) of Sarawak State Constitution under which assemblyman was disqualified only intended to disqualify persons from standing for election to the Dewan — Whether if such disqualified person was still elected to the Dewan in breach of art 17(1)(g) proper mode was for Election Court to nullify his election — Whether if assemblyman's qualification to remain as elected member of Dewan on account of his art 17(1)(g) disqualification was questioned Dewan had jurisdiction under art 19(1) of Sarawak Constitution to decide the matter with finality — Whether art 19(1) gave Dewan jurisdiction to decide on any assemblyman's qualification to be member of the Dewan regardless whether any disqualification affecting the member was incurred before his/her election to the Dewan or after

In January 2010, Ting Tiong Choon ('Ting'), a Sarawakian, acquired Australian citizenship and became a registered voter there. He renounced that citizenship five years later and his renunciation was accepted by the Australian Government with effect from 4 April 2016. Three weeks after that date, Ting filed his nomination papers in the Sarawak State General Election to vie for a seat in the Sarawak State Legislative Assembly ('the Dewan'). On polling day, he defeated his three rivals to become the state assemblyman for Pujut. One of the defeated candidates ('Hii') filed an election petition to nullify Ting's election on the ground that under art 17(1)(g) of the Sarawak State Constitution ('the Sarawak Constitution') Ting was disqualified from being elected to the Dewan for voluntarily acquiring Australian citizenship. The election petition was struck out on a technicality without hearing of its merits. Hii did not appeal against the striking out. Some months thereafter, a Minister in the Sarawak Cabinet tabled a motion in the Dewan under art 19(1) of the

Sarawak Constitution for a resolution that Ting be forthwith disqualified under art 17(1)(g) from being a member of the Dewan. Article 19(1) stated that 'If any question arises whether the speaker or a member of the Dewan has ceased to be qualified for appointment or election as such, the decision of the Dewan shall be taken and shall be final'. By an overwhelming majority, the Dewan voted in faour of the Ministerial Motion. Ting successfully applied to the High Court to set aside the Dewan's decision. Inter alia, the High Court held that the Dewan had no power to disqualify Ting under art 17(1)(g) because that provision only applied to disqualify a person from standing for election to the Dewan (a pre-election disqualification) since the phraseology used was 'a person is disqualified for being elected as an elected member of the Dewan Undangan Negeri if ...' and , accordingly, any challenge to the election of a person in breach of art 17(1)(g) had to be made by way of an election petition as prescribed by art 118 of the Federal Constitution. In contrast, the court held, art 19(1) referred to a member of the House who had 'ceased to be qualified for appointment or election ...' to the Dewan, which referred to a post-election disqualification incurred by a member after he had been elected to the Dewan. The court held that under art 19(1), the Dewan could only act in respect of a post-election disqualification and not a pre-election disqualification. The court further found that the proceedings that took place in the Dewan against Ting had breached the rules of natural justice because Ting was not given time to prepare his defence to the motion to disqualify him and the speaker had not acted impartially. The majority of the Court of Appeal ('COA') dismissed the appeals of the appellants herein against the High Court's decision. The majority held that arts 16 and 17 of the Sarawak Constitution dealt with the disqualification of a person prior to election (in which event, the Election Court was the proper authority to rule on the alleged disqualification) whereas arts 18 and 19 dealt with disqualification of an elected member post-election (in which case, the Dewan had the jurisdiction to determine the matter). The majority held that since the Dewan had not acted within its jurisdiction in Ting's case, it could not invoke art 72 of the Federal Constitution to say that the validity of its proceedings could not be questioned by the court. The COA also did not consider the issue of the alleged breach of the rules of natural justice. The minority judgment of the COA essentially held that matters concerning membership of the Dewan and disqualification of members (including the motion to disqualify Ting) were related to the internal management and core or essential business of the Dewan and were not open to interference and scrutiny by the court. Accordingly, the Ministerial Motion and the decision to disqualify Ting were non-justiciable based both on arts 19(1) of the Sarawak Constitution and art 72 of the Federal Constitution. The appellants were granted leave to file the instant appeals against the COA's decision on seven questions of law including: (a) whether the Dewan had power under art 19(1) of the Sarawak Constitution to decide on the continued membership of an assemblyman if his disqualification for election to the Dewan under art 17(1)(g) of the Sarawak Constitution was raised in the

Dewan at any time; (b) whether the business/proceedings of the Dewan were non-justiciable under art 19(1) of the Sarawak Constitution read with art 72(1) of the Federal Constitution; (c) whether an assemblyman's art 17(1)(g) disqualification was removable given that there was no provision for removal/cessation of such disqualification in the Sarawak Constitution; (d) whether any conflict existed between arts 17(1)(g) and 19(1) of the Sarawak Constitution and art 118 of the Federal Constitution; (e) whether an election petition under art 118 of the Federal Constitution was the only way to challenge the appointment or election of a member of the Dewan; (f) whether a Malaysian citizen who had renounced his foreign citizenship before nomination day was eligible to contest for a state seat in the light of art 17(1)(g) of the Sarawak Constitution.

Held, by majority, allowing the appeals, setting aside the decision of the Court of Appeal and restoring the decision of the Dewan:

(1) **(per Tengku Maimun Chief Justice, dissenting)** It was very obvious on the evidence that Ting had voluntarily acquired foreign citizenship and was therefore clearly disqualified for election and membership by virtue of art 17(1)(g) of the Sarawak Constitution. However, the appropriate body to determine his disqualification was the Election Court and not the Dewan. Since the disqualification incurred by him was a pre-election disqualification, the Dewan had no jurisdiction to make the decision to disqualify him vide the Ministerial Motion (see para 17).

(2) **(per Tengku Maimun Chief Justice, dissenting)** The words used in art 19(1) of the Sarawak Constitution were 'has ceased'. This was similar to art 53(1) of the Federal Constitution which used the phrase 'has become'. Both those phrases in their ordinary meaning suggested that the disqualification must have happened after the person concerned was already sitting in the House such that the House might make a decision as to his or her membership. Accordingly, interpreting the words 'has ceased' in art 19(1) of the Sarawak Constitution suggested that the Dewan had powers to make decisions only in respect of post-election disqualifications (see para 20).

(3) **(per Tengku Maimun Chief Justice, dissenting)** Since the Dewan did not have the jurisdiction to decide on Ting's pre-election disqualification, it could not avail of the immunity from judicial interference provided by art 72(1) of the Federal Constitution; neither was it necessary for the Court to address the breach of natural justice argument raised by Ting (see paras 47 & 49).

(4) **(per David Wong CJ (Sabah and Sarawak), dissenting)** The words used in the relevant provisions of the Sarawak Constitution were clear and unambiguous. A proper and wholesome construction of the Sarawak Constitution against the Federal Constitution clearly suggested that the

drafters of the Sarawak Constitution had intended to allow the Dewan the jurisdiction to determine post-election disqualifications only (see paras 71–72).

(5) **(per David Wong CJ (Sabah and Sarawak), dissenting)** The High Court found as a fact that there was a breach of the rules of natural justice in the Dewan's proceedings against Ting. Looking at the *Hansard*, there was no reason to depart from the findings of the High Court judge (see para 107).

(6) **(per Abdul Rahman Sebli FCJ, majority)** In the light of art 17(1)(g) of the Sarawak Constitution, a Malaysian citizen who had acquired foreign citizenship but had renounced it before nomination day of an election was not qualified to be nominated as a candidate in the election. As unanimously found by all the judges of the COA in the instant case, with which finding this court agreed, Ting's disqualification was a continuing one due to the fact that his act of acquiring foreign citizenship was not redeemable or forgivable unlike other acts of disqualification envisaged by art 17(3) of the Sarawak Constitution. The exclusion in art 17(3) of any of the acts of disqualification in para (g) of art 17(1) was deliberate. Article 17(1)(g) therefore had to be construed to mean that a citizen who had voluntarily acquired foreign citizenship could not remove the disqualification simply by renouncing that citizenship as Ting had purported to do in this case. The legislative intent behind art 17(1)(g) was to disqualify for an indefinite period a person who had voluntarily acquired foreign citizenship (see paras 183–184 & 231).

(7) **(per Abdul Rahman Sebli FCJ, majority)** Although the COA unanimously found that Ting's disqualification under art 17(1)(g) was continuing and unforgivable, Ting never appealed or cross-appealed against that decision. The present appeals therefore had to be decided on the premise that Ting was a disqualified person both before and after his election to the Dewan and that his disqualification was a continuing one for the purposes of both arts 17(1)(g) and 19(1) of the Sarawak Constitution. Accordingly, it made no difference whether his disqualification was pre-election or post-election as his status as a disqualified person remained unchanged. Ting's argument that the Dewan's jurisdiction under art 19(1) was confined to post-election disqualification and not to pre-election disqualification had no legal basis. There was nothing in the Sarawak Constitution or the Federal Constitution to warrant such demarcation of jurisdiction. Article 19(1) had to be given a purposive interpretation which, if adopted, conferred on the Dewan the jurisdiction to determine whether the speaker or any member should vacate his seat whenever the question of his qualification arose (see paras 135, 166 & 178).

(8) **(per Abdul Rahman Sebli FCJ, majority)** The Dewan had full

jurisdiction, authority and power pursuant to arts 17(1)(g) and 19(1) of the Sarawak Constitution and arts 48(1)(f) and 53(1) of the Federal Constitution to disqualify and remove Ting from the Dewan for having acquired Australian citizenship prior to his election and appointment to the Dewan. The object behind art 17(1)(g) read with art 19(1) was to prevent a disqualified person from getting his way into the Dewan and remaining there as an elected member. Article 19(1) had to be read harmoniously with art 17(1)(g) and not in isolation. The majority of the COA therefore erred in holding that the Dewan did not have the power/jurisdiction under art 19(1) to remove Ting from the House because his disqualification was committed before he was elected as a member of the Dewan and not incurred while he was an elected member of the House. The majority was fundamentally wrong to regard Ting as suffering from only a pre-election disqualification and not a post-election disqualification. Ting was a disqualified person both before and after his election to the Dewan. He came to the Dewan with a pre-existing disqualification incurred prior to his election to the House which meant he continued to suffer from that disqualification during his tenure in the Dewan. It went against the spirit of art 17(1)(g) to allow Ting to remain as an elected member in the Dewan despite his disqualification (see paras 139–147 & 209).

(9) **(per Abdul Rahman Sebli FCJ, majority)** Ting's argument that art 19(1) of the Sarawak Constitution was void for being inconsistent with art 118 of the Federal Constitution had no merit. There was no conflict between the two articles. Article 118 merely prescribed that the only mode for challenging an election result was by way of an election petition. Whereas, art 19(1) was not concerned with challenging the result of an election but was a provision that empowered the Dewan to decide, if such question arose, whether the speaker or a member of the Dewan was qualified to continue to remain in the Dewan as an appointed or elected member (see paras 158–159 & 163).

(10) **(per Abdul Rahman Sebli FCJ, majority)** The majority of the COA, being focused on the issue of jurisdiction, failed to consider art 72(1) of the Federal Constitution which prevented the court from questioning the validity of any proceedings in the Dewan. So long as the Dewan had acted within the limits of its power, art 72(1) precluded the court from interfering with the exercise of that power. The moving of the Ministerial Motion to decide on Ting's qualification, the attendant debate on the motion and the voting on the motion were all matters that came within the core business of the Dewan. The whole proceedings therefore attracted privilege and remained inviolable (see paras 193, 195 & 201–202).

(11) **(per Abdul Rahman Sebli FCJ, majority)** The facts did not bear out

Ting's complaint that the Dewan's action against him had breached the rules of natural justice. The appeal record showed that Ting was given every opportunity by the Speaker of the House to defend himself against the Ministerial Motion. The *Hansard* further showed that Ting had exercised his right to give his side of the story. There was no evidential basis for Ting to complain that he was not given a right of hearing in breach of the rules of natural justice (see paras 222 & 224–225).

[Bahasa Malaysia summary

Pada Januari 2010, Ting Tiong Choon ('Ting'), seorang warga Sarawak, telah memperoleh kewarganegaraan Australia dan menjadi pengundi berdaftar di sana. Dia melepaskan kewarganegaraan itu lima tahun kemudian dan penolakannya diterima oleh Kerajaan Australia berkuat kuasa mulai 4 April 2016. Tiga minggu selepas tarikh tersebut, Ting mengemukakan kertas pencalonannya dalam Pilihan Raya Umum Negeri Sarawak untuk bersaing bagi merebut kerusi di Dewan Undangan Negeri Sarawak ('Dewan'). Pada hari mengundi, dia telah menewaskan tiga pesaing untuk menjadi Anggota Dewan Undangan Negeri Pujut. Salah satu calon dikalahkan ('Hii') memfailkan petisyen pilihan raya untuk membatalkan pemilihan Ting atas alasan bahawa di bawah perkara 17(1)(g) Perlembagaan Negeri Sarawak ('Perlembagaan Sarawak') Ting telah hilang kelayakan untuk dipilih ke Dewan kerana telah memperoleh kewarganegaraan Australia secara sukarela. Petisyen pilihan raya telah ditolak atas alasan teknikal tanpa mendengar meritnya. Hii tidak merayu terhadap penolakkan itu. Beberapa bulan selepas itu, seorang Menteri di Kabinet Sarawak mengemukakan usul di Dewan berdasarkan perkara 19(1) Perlembagaan Sarawak untuk membuat resolusi bahawa Ting akan dibatalkan kelayakannya di bawah perkara 17(1)(g) daripada menjadi anggota Dewan. Perkara 19(1) menyatakan bahawa 'If any question arises whether the speaker or a member of the Dewan has ceased to be qualified for appointment or election as such, the decision of the Dewan shall be taken and shall be final'. Dengan majoriti besar, Dewan telah mengundi untuk menyokong Usul Menteri. Ting berjaya memohon kepada Mahkamah Tinggi untuk mengetepikan keputusan Dewan itu. Antara lain, Mahkamah Tinggi memutuskan bahawa Dewan tidak mempunyai kuasa untuk melucut kelayakan Ting bawah perkara 17(1)(g) kerana peruntukan itu hanya digunakan untuk membatalkan kelayakan seseorang daripada menawarkan diri untuk pemilihan ke Dewan (kehilangan kelayakan pra-pilihan raya) oleh kerana frasaologi yang digunakan adalah 'a person is disqualified for being elected as an elected member of the Dewan Undangan Negeri if ...' dan, sewajarnya, apa-apa cabaran kepada pengundian seseorang yang melanggar perkara 17(1)(g) perlu dibuat melalui petisyen undian sepertimana ditetapkan oleh perkara 118 Perlembagaan Persekutuan. Sebaliknya, mahkamah berpendapat, perkara 19(1) merujuk kepada anggota Dewan yang telah 'ceased to be qualified for appointment or election ...' kepada Dewan. Mahkamah memutuskan bahawa di bawah perkara 19(1), Dewan hanya boleh bertindak

berkaitan hilang kelayakan selepas pilihan raya dan bukan hilang kelayakan pra-pilihan raya. Mahkamah selanjutnya mendapati bahawa prosiding yang berlangsung di Dewan terhadap Ting telah melanggar rukun keadilan asasi kerana Ting tidak diberi masa untuk menyediakan pembelaannya untuk usul membatalkannya dan speaker tidak bertindak secara tidak berat sebelah. Majoriti Mahkamah Rayuan ('MR') telah menolak rayuan perayu-perayu ini terhadap keputusan Mahkamah Tinggi. Majoriti berpendapat bahawa perkara-perkara 16 dan 17 Perlembagaan Sarawak menangani kehilangan kelayakan seseorang sebelum pilihan raya (di mana, Mahkamah Pilihan Raya adalah pihak berkuasa yang tepat untuk memutuskan mengenai kehilangan kelayakan tersebut) manakala perkara-perkara 18 dan 19 menangani kehilangan kelayakan anggota terpilih selepas pilihan raya (dalam hal ini, Dewan mempunyai bidang kuasa untuk menentukan perkara itu). Majoriti memutuskan bahawa oleh kerana Dewan tidak bertindak dalam bidang kuasanya dalam kes Ting, ia tidak boleh menggunakan perkara 72 Perlembagaan Persekutuan untuk mengatakan bahawa kesahihan prosidingnya tidak boleh dipersoalkan oleh mahkamah. MR juga tidak mempertimbangkan isu berhubung pelanggaran rukun keadilan asasi yang dikatakan itu. Penghakiman minoriti MR terutamanya memutuskan bahawa perkara-perkara berkaitan keanggotaan Dewan dan kehilangan kelayakan anggota (termasuk usul membatalkan kelayakan Ting) adalah berkaitan pengurusan dalaman dan penting atau urusan utama Dewan dan tidak terbuka untuk campur tangan dan penelitian mahkamah. Oleh demikian, usul menteri dan keptusan untuk membatalkan kalayakan Ting adalah tidak wajar berdasarkan kedua-dua perkara 19(1) Perlembagaan Sarawak dan perkara 72 Perlembagaan Persekutuan. Perayu-perayu telah diberikan kebenaran untuk memfailkan rayuan-rayuan ini terhadap keputusan MR berhubung tujuh persoalan undang-undang termasuk: (a) sama ada Dewan mempunyai kuasa di bawah perkara 19(1) Perlembagaan Sarawak untuk memutuskan berhubung sambungan keanggotaan ADUN jika hilang kelayakannya untuk dipilih ke Dewan di bawah perkara 17(1)(g) Perlembagaan Sarawak ditimbulkan dalam Dewan pada bila-bila masa; (b) sama ada urusan/prosiding Dewan adalah tidak wajar di bawah perkara 19(1) Perlembagaan Sarawak dibaca bersama perkara 72(1) Perlembagaan Persekutuan; (c) sama ada hilang kelayakan ADUN di bawah perkara 17(1)(g) boleh disingkirkan memandangkan tiada peruntukan untuk penyingkiran/pemberhentian hilang kelayakan sedemikian dalam Perlembagaan Sarawak; (d) sama ada apa-apa konflik yang terdapat antara perkara 17(1)(g) dan perkara 19(1) Perlembagaan Sarawak dan perkara 118 Perlembagaan Persekutuan; (e) sama ada petisyen pilihan raya di bawah perkara 118 Perlembagaan Persekutuan adalah satu-satunya jalan untuk mencabar pelantikan atau pilihan anggota Dewan; (f) sama ada warganegara Malaysia yang telah menolak warganegara asingnya sebelum hari pencalonan adalah layak untuk kerusi DUN berdasarkan perkara 17(1)(g) Perlembagaan Sarawak.

Diputuskan, melalui majority, membenarkan rayuan-rayuan, mengetepikan keputusan Mahkamah Rayuan dan mengembalikan keputusan Dewan:

(1) **(oleh Tengku Maimun Ketua Hakim, menentang)** Adalah jelas berdasarkan keterangan bahawa Ting telah secara sukarela memperoleh kewarganegaraan asing dan dengan itu jelas hilang kelayakan untuk pilihan raya dan keahlian menurut perkara 17(1)(g) Perlembagaan Sarawak. Walau bagaimanapun, badan yang sesuai untuk menentukan kehilangan kelayakannya adalah Mahkamah Pilihan Raya dan bukan Dewan. Oleh kerana kehilangan kelayakan yang ditanggung olehnya adalah kehilangan kelayakan sebelum pilihan raya, Dewan tiada bidang kuasa untuk membuat keputusan untuk membatalkan kelayakannya melalui Usul Menteri (lihat perenggan 17).

(2) **(oleh Tengku Maimun Ketua Hakim, menentang)** Perkataan-perkataan yang digunakan dalam perkara 19(1) Perlembagaan Sarawak adalah 'has ceased'. Ini adalah sama dengan perkara 53(1) Perlembagaan Persekutuan yang menggunakan frasa 'has become'. Kedua-dua frasa tersebut dalam maksud biasa mencadangkan bahawa kehilangan kelayakan itu mungkin telah berlaku selepas orang berkenaan telahpun duduk dalam Dewan sehingga Dewan mungkin membuat keputusan berhubung keahliannya. Oleh demikian, mentafsir perkataan-perkataan 'has ceased' dalam perkara 19(1) Perlembagaan Sarawak mencadangkan bahawa Dewan mempunyai kuasa untuk membuat keputusan hanya berkaitan kehilangan kelayakan selepas pilihan raya (lihat perenggan 20).

(3) **(oleh Tengku Maimun Ketua Hakim, menentang)** Oleh kerana Dewan tidak mempunyai bidang kuasa untuk memutuskan hilang kelayakan sebelum pilihan raya Ting, ia tidak dapat memanfaatkan kekebalan daripada campur tangan kehakiman yang diperuntukkan oleh perkara 72(1) Perlembagaan Persekutuan; mahu pun ia perlu untuk mahkamah menangani hujah pelanggaran keadilan asasi yang ditimbulkan oleh Ting (lihat perenggan 47 & 49).

(4) **(oleh David Wong HB (Sabah dan Sarawak), menentang)** Perkataan-perkataan yang digunakan dalam peruntukan berkaitan Perlembagaan Sarawak adalah jelas dan tidak taksa. Penggubalan yang wajar dan menyeluruh Perlembagaan Sarawak berbanding Perlembagaan Persekutuan jelas mencadangkan bahawa penggubal-penggubal Perlembagaan Sarawak berniat untuk membenarkan Dewan bidang kuasa untuk menentukan hilang kelayakan selepas pilihan raya (lihat perenggan 71–72).

(5) **(oleh David Wong HB (Sabah dan Sarawak), menentang)** Mahkamah Tinggi mendapati ia suatu fakta bahawa terdapat pelanggaran rukun keadilan asasi dalam prosiding Dewan terhadap Ting. Melihat *Hansard*,

tiada sebab untuk menyimpang daripada dapatan hakim Mahkamah Tinggi (lihat perenggan 107).

(6) **(oleh Abdul Rahman Sebli HMP, menentang)** Berdasarkan perkara 17(1)(g) Perlembagaan Sarawak, seorang warganegara Malaysia yang telah memperoleh kewarganegaraan asing tetapi menolaknya sebelum hari pencalonan suatu pilihan raya tidak layak dicalon sebagai calon dalam pilihan raya itu. Sebagaimana sebulat suara didapati oleh semua hakim MR dalam kes ini, dengan dapatan yang dipersetujui mahkamah ini, kehilangan kelayakan Ting adalah suatu yang berterusan disebakan fakta bahawa tindakannya memperoleh kewarganegaraan asing tidak boleh ditebus atau dimaafkan tidak seperti tindakan kehilangan kelayakan lain yang dibincangkan oleh perkara 17(3) Perlembagaan Sarawak. Pengecualian dalam perkara 17(3) berhubung apa-apa tindakan hilang kelayakan dalam perenggan (g) perkara 17(1) adalah disengajakan. Perkara 17(1)(g) dengan itu perlu ditafsirkan untuk bermaksud bahawa seorang warganegara yang dengan suka rela memperoleh kewarganegaraan asing tidak boleh menyingkirkan hilang kelayakan itu dengan hanya menolak kewarganegaraan tersebut sebagaimana Ting bermaksud untuk berbuat demikian dalam kes ini. Niat badan perundangan dalam perkara 17(1)(g) adalah untuk membatalkan kelayakan bagi tempoh yang tidak ditentukan buat seseorang yang secara sukarela memperoleh kewarganegaraan asing (lihat perenggan 66–67 & 114).

(7) **(oleh Abdul Rahman Sebli HMP, menentang)** Walaupun MR sebulat suara mendapati bahawa hilang kelayakan Ting di bawah perkara 17(1)(g) adalah berterusan dan tidak boleh dimaafkan, Ting tidak pernah merayu atau merau blasa terhadap keputusan tersebut. Rayuan-rayuan ini oleh demikian hendaklah diputuskan atas premis bahawa Ting adalah orang yang hilang kelayakan untuk kedua-dua sebelum dan selepas pemilihannya ke Dewan dan bahawa kehilangan kelayakannya adalah satu yang berterusan bagi tujuan kedua-dua perkara-perkara 17(1)(g) dan 19(1) Perlembagaan Sarawak. Oleh demikian, tiada ada perbezaan sama ada kehilangan kelayakannya adalah sebelum atau selepas pilihan raya kerana statusnya sebagai seorang yang hilang kelayakan masih tidak berubah. Hujah Ting bahawa bidang kuasa Dewan di bawah perkara 19(1) adalah terbatas kepada hilang kelayakan selepas pilihan raya dan bukan hilang kelayakan sebelum pilihan raya tidak mempunyai asas undang-undang. Tiada apa-apa dalam Perlembagaan Sarawak atau Perlembagaan Persekutuan yang menjamin pembatasan bidang kuasa tersebut. Perkara 19(1) hendaklah diberikan tafsiran bertujuan, jika, diguna pakai, memberikan ke atas Dewan bidang kuasa untuk menentukan sama ada speaker atau mana-mana anggota patut mengosongkan kerusinya apabila persoalan kehilangan kelayakannya timbul (lihat perenggan 135, 166 & 178).

(8) **(oleh Abdul Rahman Sebli HMP, menentang)** Dewan mempuyai bidang kuasa, autoriti dan kuasa penuh menurut perkara-perkara 17(1)(g) dan 19(1) Perlembagaan Sarawak dan perkara-perkara 48(1)(f) dan 53(1) Perlembagaan Persekutuan untuk membatalkan kelayakan dan menyingkir Ting dari Dewan kerana memperoleh kewarganegaraan Australia sebelum pemilihan dan pelantikannya ke Dewan. Tujuan perkara 17(1)(g) dibaca dengan perkara 19(1) adalah untuk mengelakkan seorang yang hilang kelayakan daripada mendapat caranya ke dalam Dewan dan kekal di situ sebagai anggota yang dipilih. Perkara 19(1) hendaklah dibaca bersama dengan perkara 17(1)(g) dan bukan secara berasingan. Majoriti MR dengan itu terkhilaf kerana memutuskan bahawa Dewan tidak mempunyai kuasa/bidang kuasa di bawah perkara 19(1) untuk menyingkir Ting dari Dewan keran kehilangan kelayakannya telah berlaku sebelum dia dipilih sebagai anggota Dewan dan tidak berlaku semasa dia anggota dipilih Dewan. Majoriti terkhilaf kerana menganggap Ting hanya mengalami kehilangan kelayakan sebelum pilihan raya dan bukan kehilangan kelayakan selepas pilihan raya Ting adalah seorang yang hilang kelayakan untuk kedua-dua sebelum dan selepas pemilihannya ke Dewan. Beliau datang ke Dewan dengan kehilangan kelayakan yang sedia ada sebelum pemilihannya ke Dewan yang bermaksud dia berterusan mengalami kehilangan kelayakan sepanjang jawatannya dalam Dewan. Ia adalah bertentangan dengan perkara 17(1)(g) untuk membenarkan Ting kekal sebagai anggota dipilih dalam Dewan dengan kehilangan kelayakannya (lihat perenggan 139–147 & 209).

(9) **(oleh Abdul Rahman Sebli HMP, menentang)** Hujah Ting bahawa perkara 19(1) Perlembagaan Sarawak adalah tidak sah kerana tidak konsisten dengan perkara 118 Perlembagaan Persekutuan tiada merit. Tiada konflik antara dua perkara tersebut. Perkara 118 hanya menetapkan bahawa satu-satunya cara untuk mencabar suatu keputusan pilihan raya adalah melalui petisyen pilihan raya. Manakala, perkara 19(1) tidak berkenaan keputusan pilihan raya tetapi adalah peruntukan yang memberi kuasa kepada Dewan untuk memutuskan, jika persoalan sebegini timbul, sama ada Speaker atau anggota Dewan layak untuk terus kekal dalam Dewan sebagai anggota yang dilantik atau dipilih (lihat perenggan 158–159 & 163).

(10) **(oleh Abdul Rahman Sebli HMP, menentang)** Majoriti MR, yang fokus kepada isu bidang kuasa, telah gagal mengambil kira perkara 72(1) Perlembagaan Persekutuan yang menghalang mahkamah daripada mempersoalkan kesahihan apa-apa prosiding dalam Dewan. Selagi Dewan bertindak dalam batasan kuasanya, perkara 72(1) dihalang daripada campur tangan dengan pelaksanaan kuasa tersebut. Pelaksanaan Usul Menteri untuk memutuskan kelayakan Ting, perbahasan usul dan pemungutan suara atas usul adalah semua perkara yang menjadi urusan

A utama Dewan. Oleh itu, keseluruhan prosiding menarik hak istimewa dan tetap tidak dapat dilanggar (lihat perenggan 193, 195 & 201–202).

(11) **(oleh Abdul Rahman Sebli HMP, menentang)** Fakta tersebut tidak menunjukkan aduan Ting bahawa tindakan Dewan terhadapnya telah B melanggar peraturan keadilan semula jadi. Rekod rayuan menunjukkan bahawa Ting diberikan setiap kesempatan oleh Speaker Dewan untuk membela diri terhadap Usul Menteri. Selanjutnya *Hansard* menunjukkan bahawa Ting telah menggunakan haknya untuk memberitahu kisahnya. Tiada asas pembuktian bagi Ting untuk C mengadu bahawa dia tidak diberi hak untuk dideng yang melanggar rukun keadilan asasi (lihat perenggan 222 & 224–225).]

Cases referred to

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 D MLJ 393; [1998] 2 CLJ 75, FC (refd)
Cormack v Cope (1974) 131 CLR 432, HC (refd)
Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd (Bar Council Malaysia, intervener) [2004] 2 MLJ 257; [2004] 1 CLJ 701, FC (refd)
Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed E *Idrus* [1981] 1 MLJ 29, FC (refd)
Dewan Undangan Negeri Selangor & Ors v Mohd Hafarizam bin Harun [2016] 4 MLJ 661; [2016] 7 CLJ 143, FC (refd)
Election Commission, India v Saka Venkata Subba Rao 1953 SCR 1144; 1953 AIR 210, SC (distd)
F *Election Commission, Malaysia v Abdul Fatah bin Haji Haron* [1987] 2 MLJ 716; [1987] CLJ Rep 92, SC (refd)
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PP v Rajappan [1986] 1 MLJ 152, SC (refd)
R v Chaytor [2011] 1 AC 684, SC (refd)
Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561; [2017] 5 CLJ 526, FC (refd)
Teng Chang Khim (appealing as speaker of Selangor State Legislative Assembly) v Badrul Hisham bin Abdullah & Anor [2017] 5 MLJ 567; [2017] 9 CLJ 630, FC (distd)
Teng Chang Khim (Chairman of Select Commitee on Competence, Accountability and Transparency and Chairman of Commitee of Privilege Selangor State Assembly) & Ors v Dato' Raja Ideris bin Raja Ahmad & Ors [2014] 4 MLJ 12; [2014] 3 CLJ 173, FC (refd)
Yang Dipertua, Dewan Rakyat & Ors v Gobind Singh Deo [2014] 6 MLJ 812, FC (refd)

Legislation referred to

Election Offences Act 1954 s 32, 32(e)
Federal Constitution arts 4(1), 19(1), 24(1), 48, 48(1), (1)(e), (1)(f), 50, 50(1), (2), 53, 53(1), 71, 71(4), 72, 72(1), 118, 133, 135(2), Eight Schedule
Indian Constitution [IND] arts 190(3), 192(1), 193, 329
Perak State Constitution art XXXIV
Sarawak Constitution arts 16, 17, 17(1), 17(1)(g), (3), (4), (5), 18, 18(2)(a), 19, 19(1), 20

Appeal from: Civil Appeal Nos Q-01(A)-212–07 of 2017, Q-01(A)-250–07 of 2017 and Q-02(A)-1382–07 of 2017 (Court of Appeal, Kuching)

Cecil Abraham (Shankar Ram Asnani, Rishwant Singh and Russel Lim with him) (Thomas, Shankar Ram & Co) in Civil Appeal No 01(f)-20–08 of 2019 (Q) for the appellant.
Talat Mahmood Abdul Rashid (Saferi Ali, Mohd Adzrul Adzlan and Evy Liana Atang with him) (Sarawak State Attorney-General's Chambers) in Civil Appeal No 01(f)-21–08 of 2019 (Q) for the appellant.
Chong Siew Chiang (Wong King Wei and Michael Kong Feng Nian with him) (King Wei and Company) in Civil Appeal No 01(f)-20–08 of 2019 (Q) for the first respondent.
George Lo (Jonathan Tay with him) (George Lo & Advocate) in Civil Appeal No 01(f)-20–08 of 2019 (Q) for the second respondent.
Talat Mahmood Abdul Rashid (Saferi bin Ali, Mohd Adzrul bin Adzlan and Evy Liana bt Atang with him) (Sarawak State Attorney-General's Chambers) in Civil Appeal Nos 01(f)-20–08 of 2019 (Q) for the third respondent.
Shamsul Bolhassan (Azizan Md Arshad with him) (Senior Federal Counsel, Attorney General's Chambers) in Civil Appeal No 01(f)-20–08 of 2019 (Q) for the fourth respondent.

Tengku Maimun Chief Justice (delivering dissenting judgment):

INTRODUCTION

[1] I have read the majority judgment in draft. With greatest respect, I am unable to agree with it. I accordingly deliver this separate judgment indicating the reasons for my disagreement. As my learned brother, Abdul Rahman Sebli FCJ, has adequately summarised the facts in the majority judgment, I only propose to deal with the questions of law relevant to these appeals.

[2] For convenience and clarity, I shall collectively refer to the Government of Sarawak, the Dewan Undangan Negeri of Sarawak ('Dewan'), the Honourable The Speaker of the Dewan, the Election Commission of Malaysia and Dato Seri Wong Soon Koh — as the appellants. I shall refer to Dr Ting Tiong Choon as the respondent.

[3] Having read and carefully considered the majority and dissenting judgments of the Court of Appeal including the supporting judgment which concurs with the majority judgment, it is my view that the majority judgment of the Court of Appeal is not perverse as it had applied the correct principles of law and arrived at a conclusion which any other reasonable tribunal, apprised of the facts and the law, would have arrived at. The majority took into account all the relevant principles of constitutional interpretation and decided cases. I would therefore dismiss these appeals and uphold the majority judgment and orders of the Court of Appeal. My reasons are as follows.

THE PRE AND POST- ELECTION STRUCTURE

[4] The Court of Appeal was of the view that these appeals could be simply resolved by determining whether the Dewan has the jurisdiction to disqualify the respondent from membership. In summary, the majority of the Court of Appeal decided, upon a construction of arts 17 and 19 of the Sarawak Constitution read together with arts 48 and 53 of the Federal Constitution, that the Dewan did not have such a power. It therefore decided that the matter before it was justiciable and as such, the decision of the Dewan to disqualify the respondent per the Ministerial Motion dated 12 May 2017 was without jurisdiction and unlawful.

[5] In summary, the sole question before this court is whether, upon a proper consideration of arts 17(1)(g) and 19 of the Sarawak Constitution read together with the Federal Constitution, the Dewan has the jurisdiction to disqualify the respondent from membership when such disqualification was incurred pre-election.

[6] Article 48 of the Federal Constitution enlists several factors disqualifying a person from contesting in elections or from membership in either House of Parliament. Article 48(1)(f) disqualifies a person on grounds that he or she, inter alia, voluntarily acquired foreign citizenship. The provision is substantially mirrored in art 17(1)(g) of the Sarawak Constitution. I agree that on a plain reading of the respective constitutional provisions, the mere voluntary acquisition of foreign citizenship or the performance of an act directly related to the rights of citizens of that foreign country is sufficient to amount to disqualification either under art 48(1)(f) of the Federal Constitution or art 17(1)(g) of the Sarawak Constitution. The fact that such foreign citizenship was subsequently renounced is therefore irrelevant.

[7] Article 53(1) of the Federal Constitution relates to the jurisdiction of Parliament to make decisions as to disqualification. The provision stipulates as follows:

> 53 Decisions as to disqualification
>
> (1) If any question arises whether a member of a House of Parliament has become disqualified for membership, the decision of that House shall be taken and shall be final:
>
> Provided that this Article shall not be taken to prevent the practice of the House postponing a decision in order to allow for the taking or determination of any proceedings that may affect the decision (including proceedings for the removal of the disqualification).

[8] Article 19(1) of the Sarawak Constitution is substantially similar to the above provision, and it reads as follows:

> 19 Decision as to disqualification
>
> (1) If any question arises whether the Speaker or a member of the Dewan Undangan Negeri has ceased to be qualified for appointment or election as such, the decision of the Dewan shall be taken and shall be final:
>
> Provided that this Article shall not be taken to prevent the practice of the Dewan postponing a decision in order to allow for the taking or determination of any proceedings that may affect the decision (including proceedings for the removal of the disqualification).

[9] In my considered view, in construing the Sarawak Constitution, reference must also be made to the Eight Schedule and art 71 respectively of the Federal Constitution. The Eight Schedule sets out certain provisions which must be inserted into the Constitution of any State. Article 71(4) suggests that the provisions of any State Constitution must have the same wording as the Eight Schedule or they must be 'substantially to the same effect'. Accordingly, the interpretation of the provisions of arts 48 and 53 of the Federal Constitution are instructive as regards the interpretation of the Constitution of

any State, in this case, the Sarawak Constitution.

[10] The seminal authority in this sense is the decision of Azmi J in *Fan Yew Teng v Setia Usaha, Dewan Ra'ayat & Ors* [1975] 2 MLJ 40 ('Fan Yew Teng No 1'). In that case, the plaintiff was successfully returned as the Member of Parliament for Menglembu in August 1974. A year later, he was convicted of a sedition offence and his sentence was sufficient to amount to disqualification under art 48(1)(e) of the Federal Constitution. He was subsequently informed that by virtue of his disqualification, he had become disqualified for membership and that his seat had accordingly become vacant. The Election Commission then proceeded with a by-election to fill in the vacancy. On these facts, the plaintiff filed an action in the High Court for a declaration, inter alia, that his seat did not become automatically vacant and that the decision for a by-election was accordingly unlawful. Therefore, the question before the court was whether the plaintiff's seat became 'automatically vacant' by virtue of his disqualification under art 48(1)(e).

[11] Counsel for the defendants in that case relied on art 50(1) of the Federal Constitution which provides as follows:

> 50 Effect of disqualification, and prohibition of nomination or appointment without consent
>
> (1) If a member of either House of Parliament becomes disqualified for membership of that House his seat shall become vacant.

[12] The defendants therefore argued that by virtue of the above provision, the plaintiff's seat had become automatically vacant. Azmi J was not persuaded by the argument. In His Lordship's view, arts 48 and 50 of the Federal Constitution must be read together with art 53 of the Federal Constitution which requires that the decision of the House must be taken when any question arises as to whether a member of the House has become disqualified for membership.

[13] The defendants also argued that art 53 of the Federal Constitution only applies to 'doubtful' disqualification such that a decision would be necessary to determine whether a disqualification has happened. The defendants submitted that since the disqualification in the case was obvious, there was no need for the House to make a decision and hence, there was no need for the defendants to refer to art 53 of the Federal Constitution.

[14] Azmi J was also not persuaded by this argument because, in His Lordship's view, such argument essentially rendered art 53 superfluous. His Lordship observed that when it is alleged that a person is disqualified, there must be an appropriate decision-maker to pronounce on that disqualification

as required by the provisions of the Federal Constitution. It was in this context that Azmi J held that upon a proper construction of the language of the Federal Constitution in its ordinary language, there does exist a pre and post-election regime. All decisions as regards pre-election disqualification are for the courts to make while all post-election disqualification are for the House to make. While the grounds for disqualification in the two regimes are commonly housed in art 48 of the Federal Constitution, the bodies entitled to pronounce on the disqualification are different. Pre-election disqualifications are to be decided by the Election Court specifically constituted under art 118 of the Federal Constitution while post-election disqualifications are to be decided by the House, under art 53 of the Federal Constitution.

[15] For completeness, this is what Azmi J held, at p 41:

> Before going into the merits of the conflicting arguments it is necessary to appreciate that article 48(1) applies to both pre-election and as well as to post-election disqualification. In short, any person who comes within one of the sub-clauses (a) to (f) of this article, will not be fit to be a candidate for membership of the Dewan Ra'ayat or be an appointee of the Dewan Negara; and further, if a sitting Member of Parliament incurs any of the disqualification mentioned in the aforesaid sub-clauses, and no question arises as to his disqualification, he will be disqualified.
>
> Secondly, it is clearly obvious that articles 50(1) and 53, as opposed to article 48(1), apply only to post-election disqualification, ie disqualification arising after election of a person to the House of Representatives or appointment to the Senate.
>
> Thirdly, it is also essential to bear in mind that, unlike the constitution of some countries with parliamentary system of government, our Constitution does not confer on the House of Representatives the power to decide elections in disputes, but only questions relating to the disqualification of members. *In the case of an election to the House of Representatives, the question of pre-election disqualification including the question of an election on the ground of disqualification of a candidate is given to the High Court under article 118, and if the disqualification is established, the election shall be void under article 50(2).* (Emphasis added.)

[16] The crucial and broader point made in that case is that when disqualification happens, doubtful or not, a decision must be made by the appropriate decision-maker. Because the case concerned a post-election disqualification, the appropriate decision-maker was the House. And, because no decision was made, the holding of the by-election was held to be unlawful and the plaintiff's seat was declared not to be vacant. By extending the ratio decidendi, if a disqualification was a pre-election one, the appropriate body to decide the validity of the election would have to be the Election Court established under art 118 of the Federal Constitution. The House, in that regard, has no power to determine such pre-election disqualification just as the court has no power to decide on post-election disqualification.

[17] Based on my analysis of the provisions of arts 17(1) and 19(1) of the Sarawak Constitution and given that they are worded substantially the same as arts 48(1) and 53(1) of the Federal Constitution, it is my considered view that the ratio decidendi in the *Fan Yew Teng No 1* case applies to the present case with equal force. Despite learned counsel for the respondent's assertion that the respondent is not disqualified, it is very obvious on the evidence that he had voluntarily acquired foreign citizenship. He is therefore clearly disqualified for election and membership by virtue of art 17(1)(g) of the Sarawak Constitution. However, the appropriate body to determine his disqualification is the Election Court and not the Dewan. In other words, because the disqualification incurred by him is a pre-election disqualification, the Dewan had no jurisdiction to make the decision to disqualify him vide the Ministerial Motion dated 12 May 2017.

[18] In this regard, the decision in *Fan Yew Teng No 1* has remained good law from when it was first pronounced in 1975. Whilst it is true that judicial precedent plays a lesser role in the interpretation of constitutional provisions (see *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29), I am satisfied that *Fan Yew Teng No 1* correctly analysed the structure of the Federal Constitution to arrive at the conclusion that a pre and post-election regime is implied in the Federal Constitution. Accordingly, it is my considered view that the majority of the Court of Appeal did correctly apply *Fan Yew Teng No 1*.

CONSTITUTIONAL INTERPRETATION

[19] Learned counsel for the appellants argue that the dissenting judgment of the Court of Appeal ought to be upheld. They make the argument that a purposive construction of the Sarawak Constitution suggests that the pre and post-election structure does not exist and that the drafters of the Sarawak Constitution did foresee allowing the Dewan to make decisions as to disqualification of members regardless of when such disqualification was incurred. The respondent seemed to suggest that while the dissenting judgment in the Court of Appeal appeared to adopt the *Fan Yew Teng No 1* judgment in part (in respect of how courts cannot interfere with Parliamentary privileges), the minority of the Court of Appeal deliberately ignored the rest of the *Fan Yew Teng No 1* decision on the pre and post-election structure.

[20] In my view, these rivalling arguments necessitate constitutional interpretation. The words used in art 19(1) of the Sarawak Constitution are 'has ceased'. This is similar to art 53(1) of the Federal Constitution which uses the phrase 'has become'. Both phrases, be it 'has ceased' or 'has become', in their ordinary meaning, suggest that the disqualification must have happened after the given person is already sitting in the Dewan or the House such that the

Dewan or the House may make a decision as to his or her membership. In other words, the qualifier 'has' preceding the verbs 'ceased' or 'become' suggest that the disqualifying factor must be a supervening event. Accordingly, interpreting the words 'has ceased' in art 19(1) of the Sarawak Constitution suggests to me that the Dewan has powers to make decisions only in respect of post-election disqualifications.

[21] To overcome the language expressed clearly in art 19(1) of the Sarawak Constitution, the appellants submit that this court ought to take a purposive construction. With respect, I disagree. Such argument appears to be premised on the judgment of Azlan Shah Ag LP in *Dato Menteri Othman bin Baginda* where His Lordship advised that the Constitution, being an organic and living document cannot be construed pedantically. In my view, such an approach is only possible where the language of the provision is unclear or ambiguous. Or, where the interpretation concerns the prismatic interpretation of fundamental rights. In this regard, I am guided by the observations of Abdoolcader J in *Merdeka University Berhad v Government Of Malaysia* [1981] 2 MLJ 356 ('Merdeka University'), where at p 360, His Lordship observed:

> I said in *Public Prosecutor v Datuk Harun bin Haji Idris & Ors* [1976] 2 MLJ 116 ... that the Constitution is not to be construed in any narrow or pedantic sense (*James v Commonwealth of Australia)* [1936] AC 578... *but this does not mean that a court is at liberty to stretch or pervert the language of the Constitution in the interests of any legal or constitutional theory, or even, I would add, for the purpose of supplying omissions or of correcting supposed errors.* (Emphasis added.)

[22] In the specific context of interpreting constitutional provisions literally where there is no ambiguity, this is what Chang Min Tat J observed in *Fan Yew Teng v Government of Malaysia* [1976] 2 MLJ 262 ('Fan Yew Teng No 2'), at p 266 (in dealing with post-election disqualification):

> The issue in his application is the right of the plaintiff to sit in the Dewan Ra'ayat and, in my view and with respect, this issue comes fully within the compass of arts 53 and 63. The issue therefore involves the proper and reasonable construction of these articles. The language is plain and unambiguous. Giving the words therein their plain and grammatical meaning, the decision on this issue is for the House to take, it is final when taken and the validity of the proceedings cannot be questioned in any court. These Articles can admit no other construction.

[23] Likewise, it will be recalled that in *Fan Yew Teng No 1*, Azmi J was not inclined to accept the defendants' arguments in that case that art 53 was only attracted in 'doubtful' cases of disqualification. In addressing that argument, Azmi J evidently had in mind settled canons of construction when, at p 42, His Lordship observed:

> I also agree with the submission of learned Counsel for the defendants that in construing the relevant articles in the Constitution the Court must try to give a

> sensible meaning of all the words. It is also a well-established canon of construction that the Court should not substitute what it thinks is Parliament's intention in the place of the clear meaning of the words used so that it is not for the Court to assume that Parliament has used certain words idly. Unless it is impossible to do so, the Court must give effect to every word used in the Constitution ... It has been suggested that it is only in cases where for instance a member has obtained a free pardon that a question is said to have arisen under article 53 and it is only in that instance that the House will decide. To my mind, there is no justification for that interpretation. If it is the intention of the Constitution to confine article 53 to doubtful cases only, then it would have said so clearly.

[24] Thus, if the drafters of the Federal Constitution had intended that either Houses of Parliament should have the jurisdiction to determine disqualification irrespective of the pre and post-election dichotomy, they would have said so clearly. The reasoning is applicable to the Sarawak Constitution given that it is constitutionally required to be worded the same or with 'substantially the same effect' as the Federal Constitution. Absent any such clear indication, it is my view that the purposive canon of construction cannot be preferred over its literal counterpart.

[25] Further, central to the concept of the literal rule, courts must also construe legislation or a Constitution as a whole, and in its context. In my respectful view, the Sarawak Constitution read in its context and in the context of the Federal Constitution does not support the view that the drafters had intended for the Dewan to have jurisdiction over pre-election disqualification. I say this for two reasons.

[26] Firstly, the entire disqualification regime must also factor in art 118 of the Federal Constitution which reads as follows:

> 118 Method of challenging election
>
> No election to the House of Representatives or to the Legislative Assembly of a State shall be called in question except by an election petition presented to the High Court having jurisdiction where the election was held.

[27] The clear and plain language of art 118 of the Federal Constitution envisions that only an Election Court has the exclusive jurisdiction to determine pre-election disqualification. It might be argued that the jurisdictions of the court and the Dewan or House may be reconciled to allow the former to adjudicate on pre-election dispute by limiting the jurisdiction of the courts to decide pre-election disqualification relating strictly to election offences. With respect, such argument is not supported by the clear language of the Election Offences Act 1954 (Act 5). Pre-election disqualification is in law one of the several grounds upon which, if proved to the satisfaction of the election judge, require the court to invalidate an election result. This is

apparent in s 32(e) of the Election Offences Act 1954, which provides:

> 32 Avoidance of election on election petition
>
> The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:
>
> ...
>
> (e) that the candidate was at the time of his election a person disqualified for election.

[28] The context in this regard suggests that there is a clear separation of powers between the Legislature (Federal and State) on the one side (to make decisions on post-election disqualification); and the courts on the other (to make decisions on pre-election disqualification).

[29] Secondly, the other indication of context suggesting that the drafters of the Sarawak Constitution had intended to conform with the pre and post-election structure established by the Federal Constitution is apparent in art 20 of the Sarawak Constitution which provides as follows:

> 20 Penalty for unqualified person sitting or voting in the Dewan Undangan Negeri
>
> Any person who sits or votes in the Dewan Undangan Negeri, knowing or having reasonable ground for knowing that he is not entitled to do so, shall be liable to a penalty not exceeding two hundred ringgit for each day on which he so sits or votes, which penalty shall be recoverable as a civil debt in the High Court at the suit of the State Attorney-General.

[30] Article 20 suggests that the Sarawak Constitution has in place a contingency that in the event a person is not entitled to sit in the Dewan by virtue of their disqualified status, then he or she shall be liable to pay a penalty for each day he or she sits in the Dewan and that such penalty shall be recoverable in the High Court as a civil debt. The context here again clearly suggests that the Sarawak Constitution, like the Federal Constitution accords fully with the pre and post-election structure.

[31] Thus, having regard to the ordinary meaning of art 19(1) of the Sarawak Constitution read in the context of the rest of the constitutional provisions, it is my considered view that the appellants' argument that this court ought to imply that the Dewan has the power to adjudicate upon pre-election disqualification is, with respect, unsupported. I would accordingly adopt the literal construction and reject the purposive construction.

[32] In arriving at this result, I am also guided by the doctrine of constitutionalism, limited government and the Rule of Law ie that the Executive and Legislative arms of Government and their powers are strictly

circumscribed by law. Only the courts may have inherent power with the view of doing complete justice and with the view of protecting its process from abuse. I am therefore constrained to reject the appellants' arguments that the powers of the Dewan to decide on pre-election disqualification may be implied under the assumption that that was what the drafters had intended (see generally *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301; [2009] 5 CLJ 631 where this court offered guidance on when to interpret constitutional provisions broadly and when to interpret them narrowly).

[33] For completeness, I also find it necessary to address the judgment of the Indian Supreme Court in *Election Commission, India v Saka Venkata Subba Rao* 1953 SCR 1144; 1953 AIR 210 ('*Saka Venkata*'). The majority of the court below relied on the judgment to arrive at its conclusions. The appellants sought to distinguish it. In that case, the plaintiff was guilty of an offence and was imprisoned for a period of seven years but was released early. His conviction was of such nature that it disqualified him from running for elections and from membership in the State Legislature. After his release, he had applied to the Indian Election Commission for exemption from the disqualification but he did not receive a reply. He nevertheless ran for election and won. Subsequent to his victory, he was informed by the Indian Election Commission that his request for exemption had been denied. On these facts, the Indian Election Commission proceeded to take legal action to have the plaintiff removed as a member of the State Assembly seat for which he had contested and won.

[34] To prevent his removal, the plaintiff filed a petition at the High Court substantively to argue that he could not be removed under the relevant provisions of the Indian Constitution. The learned High Court judge accepted the argument that the plaintiff's disqualification was a pre-election one and hence such provisions of the Indian Constitution did not apply to him. The Election Commission appealed to the Supreme Court which unanimously dismissed the appeal and affirmed the decision of the High Court.

[35] The primary provision falling for consideration in the case was art 192(1) of the Indian Constitution which provides:

> 192 Decision on questions as to disqualifications of members.
>
> (1) If any question arises as to whether a member of a House of the Legislature of a State *has become* subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final. (Emphasis added.)

[36] The Indian Supreme Court observed that the use of the phrase 'has become' only conferred power on the Governor to make a decision on any

post-election or supervening disqualification. The power did not, by virtue of the language of art 191(2), extend to disqualifications already incurred by a person prior to his membership. Patanjali Sastri CJ observed as follows:

> The Attorney-General argued that the whole fasciculus of the provisions dealing with 'disqualifications of members', viz, articles 190 to 193, should be read together, and as articles 191 and 193 clearly cover both pre-existing and supervening disqualifications, articles 190 and 192 should also be similarly understood as relating to both kinds of disqualification. According to him all these provisions together constitute an integral scheme whereby disqualifications are laid down and machinery for determining questions arising in regard to them is also provided. The use of the word 'become' in articles 190(3) and 192(1) is not inapt, in the context, to include within its scope pre-existing disqualifications also, as becoming subject to a disqualification is predicated of 'a member of a House of Legislature', and a person who, being already disqualified, gets elected, can, not inappropriately, be said to 'become' subject to the disqualification as a member as soon as he is elected. The argument is more ingenious than sound.
>
> Article 191, which lays down the same set of disqualifications for election as well as for continuing as a member, and article 193 which prescribes the penalty for sitting and voting when disqualified, are naturally phrased in terms wide enough to cover both pre-existing and supervening disqualifications; but it does not necessarily follow that articles 190(3) and 192 (1) must also be taken to cover both. Their meaning must depend on the language used which, we think, is reasonably plain. In our opinion these two articles go together and provide a remedy when a member incurs a disqualification after he is elected as a member. Not only do the words 'becomes subject' in article 190(3) and 'has become subject' in article 192(1) indicate a change in the position of the member after he was elected, but the provision that his seat is to become thereupon vacant, that is to say, the seat which the member was filling theretofore becomes vacant on his becoming disqualified, further reinforces the view that the article contemplates only a sitting member incurring the disability while so sitting.
>
> The suggestion that the language used in article 190(3) can equally be applied to a pre-existing disqualification as a member can be supposed to vacate his seat the moment he is elected is a strained and farfetched construction and cannot be accepted. The Attorney-General admitted that if the word 'is' were substituted for 'becomes' or 'has become', it would more appropriately convey the meaning contended for by him, but he was unable to say why it was not used.

[37] It is apparent from the above passage that the Supreme Court accorded the Indian Constitution a literal interpretation. Next, the Supreme Court also considered the Indian Constitution as a whole to observe that art 193 stipulates a penalty in situations where a person knows that he ought not to sit in the State Legislature, continues to sit. For completeness, art 193 of the Indian Constitution provides:

> 193 Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified

A If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on
B which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

[38] Article 20 of the Sarawak Constitution is substantially similar to art 193 of the Indian Constitution. This further fortifies my view that a contextual and
C literal reading of art 19(1) of the Sarawak Constitution suggests that it was only intended to apply to post-election disqualification.

[39] The appellants attempt to distinguish the decision in *Saka Venkata* from
D the facts of these appeals. They argue that the provisions of the Indian Constitution are vastly different from the Sarawak and Federal Constitutions. With respect, I find no merit in this argument. The only difference as far as disqualification is concerned is the authority empowered to make the decision. In Malaysia, the authority for post-election disqualification lies with the
E Dewan. In India, the authority lies with the Governor of the State acting on the advice of the Indian Election Commission. The differences are only to that extent. The rest of the procedure is substantially similar and I am inclined to think that the judgment in *Saka Venkata* is strong persuasive authority to support the conclusions at which I have arrived.

F

[40] Finally, the majority of the Court of Appeal appeared to rely on art 50(2) of the Federal Constitution. They argued that a similar provision is present in the Perak State Constitution but absent in its Sarawak counterpart. The provision provides as follows:

G (2) If a person disqualified for being a member of the House of Representatives is elected to that House or if a person disqualified for being a member of the Senate is elected or appointed to the Senate, or if an election or appointment to either House is contrary to Article 49, the election or appointment shall be void.

H **[41]** Accordingly, the majority of the Court of Appeal reasoned that because the Federal Constitution contains art 50(2) as does the Perak State Constitution a provision of similar effect, it further bolsters the argument that the Houses of Parliament do not have the power to determine pre-election disqualification. This is what Abang Iskandar JCA observed in paras 86, 98 and
I 117 of the majority judgment:

Fourthly, the presence in the Perak Constitution provisions in art XXXIV and art 50(2) of the Federal Constitution, which would deal with the situation in this case quite summarily, despite the Legislative Chamber having power to determine the status of a member when a question on his qualification arises. To my mind, the

> presence of such provision as art 50(2) of the Federal Constitution is a clear manifestation that the Dewan Rakyat has no jurisdiction to deal with a person who has been elected into the august Dewan Rakyat when he is in fact a disqualified person before he was elected. The Sarawak Constitution does not have such similar provision, definitely not in art 18 nor 19...
>
> True, as the learned SAG had submitted that there would be a lacuna if the Dewan were not empowered to determine the status of the plaintiff who was a disqualified person to remain as a member in the Dewan ... [a]n explicit provision like art 50(2) of the Federal Constitution and/or art XXXIV of the Perak State Constitution would certainly make plain as to how a person circumstanced as the plaintiff here could be dealt with ...
>
> Even so, whilst a similar provision may appear in other State Constitutions in Malaysia, such a provision is nowhere to be found in the Sarawak Constitution. Even if it was so found, it would not support the proposition put forward by the appellants. In my view, art 50 of the FC must apply to a post-election disqualification because of the operative words 'if a member ... becomes disqualified' (emphasis added). Article 50(2) of the FC would then accordingly apply to make that election void. Any other interpretation would lead to a conflict with art 118 of the FC as alluded to earlier.

[42] With respect, I agree with the observations of the learned judge. Guidance in this respect may be gleaned from *Fan Yew Teng No 1*. While art 50(2) renders the election or membership of a person void, as the case may be, that does not mean that such disqualification happens immediately or automatically. Article 50 must be read with art 53 of the Federal Constitution. The Sarawak Constitution does not have a provision of similar effect with art 50(2) of the Federal Constitution. However, that in my considered view, does not detract or dampen the general structure of the pre and post-election dichotomy apparent in the Sarawak Constitution when read in context of its own provisions and the provisions of the Federal Constitution.

[43] For the foregoing reasons, I am of the considered opinion that on a plain and contextual reading of the Federal and Sarawak Constitutions, the pre and post-election regime exist mutually exclusive of one another. While the disqualifying factors in art 17(1) operate and apply to both pre and post-election disqualification, the decision-maker in respect of each is respectively the court and the Dewan.

[44] I am aware that the effect of this judgment is that the respondent though clearly disqualified, is entitled to continue sitting in the Dewan as a member. I am however not inclined to ignore the clear and unambiguous language of art 19(1) of the Sarawak Constitution appreciated within its context and within the larger context of the Federal Constitution. And, as earlier stated, the Dewan has its remedy in the form of the sanctions imposable under art 20 of the Sarawak Constitution.

JUSTICIABILITY AND PARLIAMENTARY PRIVILEGE

[45] Learned counsel for the appellants argued that the present dispute is non-justiciable in light of art 72(1) of the Federal Constitution. They also placed considerable reliance on the judgment of this court in *Teng Chang Khim (appealing as speaker of Selangor State Legislative Assembly) v Badrul Hisham bin Abdullah & Anor* [2017] 5 MLJ 567; [2017] 9 CLJ 630 ('Teng Chang Kim') for the same proposition of law. art 72(1) of the Federal Constitution provides:

> 72 Privileges of Legislative Assembly
>
> (1) The validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any court.

[46] In *Teng Chang Kim* this court held that the power of the House to make decisions in respect of disqualification falls within the purview of art 72(1) of the Federal Constitution and as such, it is non-justiciable before the courts.

[47] With respect, in the present appeals, I have determined that on the proper construction of the relevant State and Federal Constitutional provisions, the Dewan did not have jurisdiction to decide on the respondent's pre-election disqualification. As such, the decision in *Teng Chang Kim* is distinguishable as the decision of the Selangor State Legislature in that case had been over a matter which it had jurisdiction. The immunity from judicial interference under art 72(1) of the Federal Constitution therefore clearly applied on the facts of that case. In contrast, such immunity does not arise in this case because the Dewan had no power to decide on the respondent's pre-election disqualification.

CONCLUSION

[48] There were seven leave questions posed, namely:

(1) whether the Dewan Undangan Negeri of Sarawak ('the Dewan') has the power under art 19(1) of the Sarawak Constitution to make a decision on the continued membership of an elected member whenever a question is raised in the State Assembly as to whether that member is qualified for election to the State Assembly under art 17(1)(g);

(2) whether the business or proceedings of the Dewan (including but not limited to the Ministerial Motion on 12 May 2017) is justiciable, in view of the provisions inter alia of art 19(1) of the Sarawak Constitution read with art 72(1) of the Federal Constitution;

(3) whether upon proper interpretation of art 17(1)(g) of the Sarawak Constitution, a disqualification for election to the State Assembly

resulting from voluntary acquisition of foreign citizenship and the exercise of rights accorded to a foreign citizen in that foreign country, could be removed and ceased in the absence of provision in art 17(3) or any article of the Sarawak Constitution for the removal or cessation of such disqualification;

(4) whether there is any conflict between art 17(1)(g) of the Sarawak Constitution and art 19(1) of the Sarawak Constitution and art 118 of the Federal Constitution;

(5) whether or not an election petition pursuant to art 118 of the Federal Constitution is the only mode that can be utilised to challenge the appointment of a member of the Dewan;

(6) whether a Malaysian citizen who had acquired foreign citizenship but renounced it before the nomination of an election is qualified to be nominated as a candidate for an election in the light of art 17(1)(g) of the Sarawak Constitution; and

(7) whether the Dewan has the jurisdiction to decide on the disqualification of an elected member who had previously acquired a foreign citizenship though renounced it before the nomination of an election. If the answer is in the affirmative, whether such a decision of the Dewan in justiciable in the light of art 19 of the Sarawak Constitution.

[49] In my respectful view, these appeals may be disposed of by answering leave question 7 in the negative and in the light of such answer, I consider it unnecessary to answer the rest of the questions posed. I am also aware that the respondent, during argument, raised an allegation of a breach of natural justice at the hearing of the Ministerial Motion dated 12 May 2017 before the Dewan. As I have held that the Dewan had no jurisdiction to decide on his disqualification, I do not, with respect, consider it necessary to address the breach of natural justice argument.

[50] Based on the foregoing, I am of the view that the majority of the Court of Appeal took into account all relevant principles of constitutional interpretation based on settled authority. I do not propose to disturb that decision. I therefore dismiss these appeals with no order as to costs.

David Wong CJ (Sabah and Sarawak) (delivering dissenting judgment):

INTRODUCTION

Preface

A **[51]** This country is a constitutional democracy regulated, constricted and circumscribed by the Federal Constitution — the supreme law of the land and a document drafted meticulously and after much thought and consideration by the founding fathers of the nation. Central to the Constitution is the doctrine of separation of powers which divides the institutions of government into three B branches: the Legislature, Executive and Judiciary. The Legislature makes the laws; the Executive put the laws into operation; and the Judiciary interprets the laws. This doctrine is the bedrock of a fair and responsible government providing a system where each branch checks and balances the others.

C

[52] The Judiciary is armed with the power to adjudicate upon civil or criminal matters between the State and its citizens or between citizens inter se. Under the Westminster model of Government, the Executive and Legislative branches enjoy some degree of fusion. It therefore becomes all the more D necessary that the Judiciary remains completely independent in its judicial functions. It is the courts and only the courts which have the power to declare that one branch or the other has overstepped its powers as circumscribed by the Federal Constitution. It is therefore an integral aspect of constitutionalism and the Rule of Law that the Judiciary is endowed with the power to strike down E those excessive acts. This case brings to the forefront the workings of the doctrine of separation of powers, that is, whether the Legislature had exceeded his jurisdiction in declaring the respondent a disqualified person.

[53] Judges are appointed with the solemn duty to adjudicate disputes and to F dispense pure justice through their decisions. In determining what that decision should be, we ask ourselves the question, shorn of all the legal niceties, what should be the outcome which meets the end of justice. In this case, after having considered the well written judgments of Court of Appeal and the High Court, I have no doubt that the minority judgement of Justice Mary Lim in the G Court of Appeal is what the just outcome of this case should be. But, because the Judiciary is the protector of the Federal Constitution, it must in every case be mindful of not overstepping its own functions by attempting to legislate from the bench such that its decision can meet the most favourable yet H theoretical just outcome. Hence the aforesaid question we ask ourselves, that is whether the respondent could be removed, is only one half of the equation.

[54] The other half is whether the so-called correct decision in this case is within the parameters of the law, in this case, the State Constitution of Sarawak I read within the context of the Federal Constitution — the supreme law of the land. This second half of the equation is premised on the constitutional duty of the court to accord an interpretation which is consonant to what is provided by the clear words of the written law in terms of the jurisdiction of the State Legislature, the Sarawak State Legislative Assembly, in these three appeals. It is

with this approach I shall now analyse the merits of respective submissions in seeking an answer to the second part of the equation.

Background Facts

[55] The background facts have been meticulously set out in the Court of Appeal judgment and I will not restate them. For clarity, I shall refer to all parties supporting this appeal, namely: the Honourable the Speaker of the Sarawak State Legislature, the Sarawak State Legislature itself, Dato Seri Wong Soon Koh, and the Election Commission of Malaysia as the appellants. I shall refer to Dr Ting Tiong Choon as the respondent.

[56] Suffice to say that the genesis of this whole ordeal is when the Sarawak State Legislative Assembly (DUN) was presented with a Ministerial Motion dated 12 May 2017 (MM) to disqualify the respondent as an elected member of the DUN pursuant to art 17(1)(g) of the State Constitution of Sarawak. The DUN approved such motion and declared that the respondent was thereby disqualified and ceased to be a member of the Sarawak DUN with immediate effect. The MM was premised on the grounds that prior to being nominated as a candidate with three others to contest in the state seat on N74 Pujut for the Sarawak State Election on 25 June 2016, the respondent had acquired Australian citizenship on 20 January 2010 and was a registered voter in Australia. Nonetheless, it is pertinent to note that it is undisputed that on 4 April 2016, the respondent had renounced his Australian citizenship and the renunciation was approved by the Australian Government. Therefore, when the respondent stood for election, he no longer possessed Australian citizenship. He was in fact a Malaysian.

[57] I must state at this juncture that I have no issue and in fact am in agreement with the findings of fact by the court below that the first respondent in this case is quite obviously disqualified by virtue of his taking up of Australian citizenship and his declaration of allegiance to Australia. Further, the fact that he later renounced his citizenship may never redeem him of such an offence. The language of art 17(1)(g) is very clear in this regard. It prohibits, inter alia, the very act of 'voluntary acquisition' of foreign citizenship. Thus, what art 17(1)(g) prohibits is the mere act of acquiring and not necessarily 'acquiring and retaining' foreign citizenship. The fact that the learned counsel for the first appellant kept emphasising that voting is mandatory in Australia, is therefore beside the point. It is an undisputed fact in these proceedings that the first respondent did voluntarily acquire foreign citizenship.

[58] The manner in which this case has been argued by respective counsel shows clearly the main issue is simply whether the DUN has the jurisdiction to disqualify the respondent as an elected member of the DUN pursuant to art

17(1)(g) of the State Constitution of Sarawak on 12 May 2017. There is also, of course, the peripheral issue of breach of natural justice which I shall deal with later in this judgment.

Decision of the High Court

[59] The learned judge in essence dealt with two issues, one: the issue of jurisdiction of the DUN in respect of the MM, second whether the respondent was accorded the due process of law, that is, the right to be heard.

[60] Prior to dealing with the two issues, the learned judge rightly pointed out that the decision of the DUN is justiciable and in support, referred to a decision of this court in *Dewan Undangan Negeri Selangor & Ors v Mohd Hafarizam bin Harun* [2016] 4 MLJ 661 at p 677; [2016] 7 CLJ 143 at p 153 where it held as follows:

> [37] It is to be noted that the construction of art 72(1) has come up for determination by our apex court a number of times. On this point it must always be borne in mind that the power of Parliament and the Legislative Assemblies of the States in Malaysia are limited by the Federal Constitution and the State Constitutions respectively. This principle is as stated by Suffian LP in the case of *Ah Thian v Government of Malaysia* [1976] 2 MLJ 112; [1976] 1 LNS 3 at 113 which reads as follows:
>
> > The doctrine of supremacy of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and of State Legislature in Malaysia is limited by the Constitution, and they cannot make any law they please.
>
> [38] As regards to the application of art 72(1), previous cases have held that the court has jurisdiction to determine whether the resolutions passed by the Legislative Assembly exceeded the constitutional provisions. In the case of *Datuk Joseph Pairin Kitingan v Tun Datu Haji Mustapha Datu Harun* [1987] 1 MLJ 471; [1985] 1 LNS 7 the respondent had applied to the court for declarations that his appointment as Chief Minister of Sabah by the first appellant was valid and the subsequent revocation of his appointment and of the appointment of the second appellant as Chief Minister was ultra vires the Constitution of Sabah and therefore null and void The appellants raised, inter alia, a preliminary objection that the position of the Chief Minister was a privilege of the Legislative Assembly and that since the privilege had been exercised by resolutions passed by the Legislative Assembly on a motion of confidence on 30 May 1985 and other matters on 3 August 1985, the issues raised by the respondent are notjusticiable. The Supreme Court speaking through Abdul Hamid CJ (Malaya) in upholding the dismissal of the preliminary objection held that:
>
> > The Constitution has made the Courts the ultimate interpreter of the Constitution. The Courts accordingly cannot reject a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority.

We cannot see any substance whatsoever in the contention that a privilege of the State Legislative Assembly is involved in the matter before us or that the jurisdiction of the Court to decide the issues raised is ousted as a result of the resolutions of the Assembly passed on May 30 and August 3 respectively. A

Motions of confidence or of no confidence or whatever passed in the Legislative Assembly might be political ratification or rejection of the choice made but cannot, in our view, affect the primary issues of the appointment and revocation which are legal and justiciable questions clearly within the competence andjudicial consideration and determination. B

[61] In respect of the issue of jurisdiction, this is what the learned judge held: C

The matter now before this court relates to Sarawak State Constitution and the learned State Attorney General argued that arts 17 and 18(2)(a) are to be read together and both Articles conjunctively applies to both pre andpost-elections.

The learned State Attorney General further argued that once a Malaysian citizen acquires a foreign citizenship he is 'forever disqualified' under art 17(1)(g) from being a candidate for election in the State of Sarawak or being qualified to be a member of the Dewan Undangan Negeri Sarawak, irrespective of a subsequent renunciation of that foreign citizenship. I am not persuaded by this argument. I am not prepared to read into art 17(1)(g) something which is not there. Further it cannot be the intention of the framers of the State Constitution that a foreigner who later became a Malaysian citizen has better rights compared to a citizen by birth who acquired foreign citizenship only to renounce that citizenship later, be worse off. I agree with the plaintiff's submission on this issue. D E

On plain reading of art 17(1)(g) one can easily understand from the wordings used '*a person is disqualified for being elected* as an elected member of the Dewan Undangan Negeri if ... '. This must relate to a pre-election disqualification, it cannot be postelection. To interpret otherwise would be wrong and perverse. Any challenge to the election result based on this art 17(1)(g) disqualification must therefore be made by way of an election petition as per art 118 of the Federal Constitution. F G

Article 18(2) of the State Constitution talks of 'an elected member shall also vacate his seat in the Dewan if (a) he ceases to be qualified for election as such a member of the Dewan'. This can only happen subsequent to an election. If we look at the other scenario provided ie resignation in writing and absent without leave, these two are without doubt postelection scenarios. Hence Article 18(2) has to be read with art 19(1) and not with art 17(1)(g) as argued by the learned State Attorney General. H

Having said that art 17(1)(g) cannot be read with art 18(2) what then is the status of the Ministerial Motion? It was brought before the Dewan pursuant to art 17(1)(g) (which I already said is subject to art 118 of the Federal Constitution).

I agree with the plaintiff's submission that since the Ministerial Motion is clearly based on art 17(1)(g), by virtue of art 118 the Dewan has no power to disqualify the Plaintiff as the elected member. I

[62] In respect of the issue of due process of law, the learned judge reasoned

A it out in the following manner:

> The plaintiff's colleague Chiew Chiu Sing sought for the matter to be stood down for half an hour or an hour for the plaintiff to prepare his defence so that ample time be given to the plaintiff to mount his defence and prepare the necessary documents.
>
> B The first defendant who is the Speaker of the House refused the said request. He said the matter was already filed and heard in court. It involved the plaintiff and the issue had been spelt out in the election petition, surely the plaintiff would be prepared for this. The Speaker said 'Therefore, he is prepared'.
>
> It is to be noted that the Ministerial Motion by the second defendant was received C by the Speaker the day before. I accept that the plaintiff only had notice of it the morning of the 12th May 2017 when the House begun its session for the day.
>
> I take view that with the matter of such importance and bearing in mind that 8,899 constituents of Pujut had voted and returned the plaintiff as their duly elected D assemblyman and that the plaintiff would be adversely affected if the decision of the Dewan goes against him, the least the speaker could have done was to stand down the matter as requested for half an hour to or an hour: I am constrained to say that I agree given the magnitude of the matter, the plaintiff was not given adequate and reasonable time to prepare his defence which must necessarily include documentation and the law. This denial to give adequate time to the plaintiff led to E a failure to observe the rules of naturaljustice. A proper defence I would envisage involve an explanation of what amounts to dual citizenship, an explanation on how citizenship is lost, a discussion on art 24 and 27 and whether the Dewan is a competent forum. Bearing in mind that some of the YBs are not trained in law the plaintiff will require more time. I do not think the House is equipped to hear F matters of this nature, I shall explain later.
>
> I do not think any prejudice will be caused to the mover of the Ministerial Motion if the matter was stood down for 30 minutes or so. It may inconvenience some members of the House but I doubt if support for the Ministerial Motion will be eroded or diminish during that short break, even without the crack of the whip. It G is not explained why this matter should proceed post haste.
>
> What the Ministerial Motion sought was in actual fact to remove the plaintiff as a member of the House by way of disqualification so that a by election could be held by the fifth defendant. It calls into question the election of the plaintiff as the duly elected member. H
>
> ...
>
> I bear in mind that the plaintiff is a medical doctor. He is not a legally trained litigator. At the election court it was his lawyers that argued his case not the plaintiff himself. I do not agree with the speaker's view that the plaintiff is prepared.
>
> I I agree with the plaintiff. The Rules of Natural Justice and procedural fairness were not adhered to. By taking an active part in the debate, the speaker had descended into the arena of conflict and debate. He played an active role to promote the Ministerial Motion and in so doing is no longer seen to be acting impartial. The plaintiff had submitted the speaker had acted as the prosecutor and judge. And as

can be seen at page 21 of the Hansard the speaker even knew beforehand that the member for Mambong will second the Motion. This implied pre-arranged plans and the speaker was aware of it.

Majority decision of the Court of Appeal

[63] In the matter of whether the DUN had the jurisdiction to deal with the MM, the learned judges opined that the answer to the aforesaid issue is only one of interpretation of the relevant provisions of the Sarawak Constitution. The learned judges took a holistic approach in interpretation and found that art 17 of the Sarawak Constitution only provides a set of disqualifying factors constant in nature and art 18 sets out the circumstances in which a member's tenure in the DUN may be terminated. Article 17(1)(g) has the effect of disqualifying any person from standing in an election and by virtue of art 18(2)(a), if that disqualifying act occurs whilst he is a sitting member of incurred the DUN, that member will no longer be able to remain as an elected member, thereby rendering his or her seat in the Dewan vacant. Thus, Their Lordships found as a matter of construction of the relevant provisions that there is a clear demarcating line as to the point in time when the disqualification is incurred and by whom.

[64] In construing arts 16–19 of the Sarawak Constitution, Abang Iskandar Abang Hashim JCA (as he then was) opined as follows:

> [75] It appears to me that arts 16, 17, 18 and 19 of the Sarawak Constitution read together, have created two separate and distinct regimes, in dealing with the issue of disqualification. Articles 16 and 17 deal with disqualifications of a person prior to election or pre-election. Articles 18 and 19 deal with disqualification of an elected member post-election. While I agree with learned counsel for the defendants that those articles do not employ the words such as 'prior' or 'pre-election' or 'post-election', I see nothing wrong in using those words to describe the plausible effects of those articles read together, in that manner. *As it has become quite clear, at least to me, each of the two regimes may involve a different 'decision-maker' to determine the alleged disqualification.* (Emphasis added.)

[65] To determine the intention of the framers of the Sarawak Constitution, Abang Iskandar Abang Hashim JCA (as he then was) looked at the operative words used and this is what he said:

> [92] The operative words used in art 19(1) and art 18(2)(a) of the Sarawak Constitution are 'has ceased' and 'ceases' respectively. A plain construction of those words as they are employed in those two mentioned articles must mean that the disqualification must have been incurred by a sitting member, post-election. Those words connote a situation when a member was qualified when he was elected into the Dewan but has since, ceased to be so qualified, as he incurred a disqualification since he was elected Article 19(1) seeks to clothe the Dewan with the power to determine whether a member has ceased to be qualified to remain as a member in

A the Dewan. It does not refer to a person. Article 18(2)(a) again declares that a member ceases to be qualified for election as such a member of the Dewan, when he commits any of the disqualifying acts and that includes voluntarily acquiring foreign citizenship during his time as a sitting member of the Dewan.

B **[66]** Premised on the above, the learned judges held that the DUN's jurisdiction to determine the status of a 'member' for alleged disqualification may be invoked at any time but the exercise of such power or jurisdiction by the DUN is limited to the question of whether a member of the Dewan had ceased to be qualified to be so elected. What that means is the disqualification conduct C must have incurred while he is a sitting member of the DUN and not for disqualifying conduct which had occurred before his election into the Dewan.

[67] In the case of the respondent's disqualification conduct of having D voluntarily acquiring a citizenship of a foreign country outside of the Federation of Malaysia this is what Abang Iskandar Abang Hashim, JCA (as he then was) said:

> [99] In sum, I agree with the defendants that the plaintiff had committed a disqualifying act as a person, under art 17(1)(g) of the Sarawak Constitution. I agree E too, that such an act incurred under the said provisions as contained in art 17(1)(a) is one that cannot be forgiven, not even under art 17(3) of the said Sarawak State Constitution. But that is the extent that I can agree with the defendants. My considered view, with respect, is that the August Dewan does not have the necessary jurisdiction to determine the impugned status of the plaintiff; despite his F disqualified status, because that disqualification was incurred before he was elected as a member of the Dewan. The language employed in arts 18 and 19 of the Sarawak State Constitution, does not confer on the Dewan the necessary jurisdiction to determine and rule on the status of the plaintiff's disqualification. My reading of the said arts 18 and 19 is that the Dewan is only empowered to determine and rule on the status of a member of the Dewan, who has since ceased to be qualified to be so G elected It connotes a change in the position of the member as to his qualified status. A disqualification based on an act of having voluntarily acquiring a citizenship of a foreign country outside of the Federation of Malaysia can still bite a member, but read with art 18(2)(a), it must need be incurred after he has been elected as a member of the Dewan. In such a situation, the Dewan would be well within its H jurisdiction to determine and take a decision on the matter. Such decision so taken by the Dewan shall be final and deserving of the immunity promised under art 72 of the Federal Constitution. But the factual scenario pertaining to the plaintiff before us did not fit into the one that is envisaged by arts 18 and 19. His disqualification was incurred well before he was elected as a member of the Dewan. To say that the Dewan had the necessary jurisdiction, as did the defendants, would I be a contention that was, though seemingly ingenious, was nevertheless at the same time, one that is unsound, strained, far-fetched and cannot be accepted Put simply, I find such contention to be untenable.

Dissenting judgment of the Court of Appeal

[68] Justice Mary Lim's approach on the justiciability of the decision of the DUN was as follows as gleaned from the following passages of Her Ladyship's grounds:

> [253] From all these decisions, it may therefore, be reasonably concluded as follows:
>
> First, the doctrine of parliamentary privileges is intrinsically part of the doctrine of separation of powers.
>
> Second, this doctrine is enshrined in arts 63 and 72 of the Federal Constitution; and in the case of the State Assembly of Sarawak, further, in art 19 of its State Constitution.
>
> Third, the doctrine ofparliamentary privileges means that the House and the State Assembly, as the case may be, and its members, enjoy immunity fromjudicial interference.
>
> Fourth, the existence of this doctrine ofparliamentary privilege is to ensure effective discharge of the functions of the House or the State Assembly by both the House and the State Assembly and its respective members.
>
> Fifth, the courts respect that privilege and will not interfere in any parliamentary proceedings or internal management or core business of the House or State Assembly.
>
> Sixth, the court will not interfere in those parliamentary proceedings, internal management or core or essential business of the House where such interference will impact adversely on the core or essential business of the House or the State Assembly.
>
> [254] From the decisions discussed, in particular the earlier decisions of *Lim Cho Hock* and *Fan Yew Teng*, and the recent decision of *Teng Chang Khim v Badrul Hisham Abdullah*, it is also plain that the matter of membership and the disqualification or loss of membership of the House or the State Assembly, as the case may be, is intrinsically related to the management and core or essential business of the House or the State Assembly. Any interference or scrutiny of any decision or related to such decisions of membership or disqualification of membership by the court will undoubtedly, adversely impact or affect the efficient discharge by the members of their parliamentarian functions. These views have prevailed through these last 60 odd years with no shift in the approach by the courts.
>
> [255] Having therefore set out the law in relation to the matter of justiciability of the issues before the court and thereby the jurisdiction of the court to attend to the issues presented, it must follow that the present appeals turn on whether the State Assembly has jurisdiction to deal with the matters contained in the ministerial motion moved under standing order 23(1)(a); whether such matters fall within the core or essential business of the State Assembly. It goes without saying that the ministerial motion was debated and voted upon by the members of the State Assembly. And, the State Assembly resolved that the plaintiff is 'disqualified under art 17(1)(g) of the Sarawak State Constitution to be a member and has ceased to be a member of the Dewan Undangan Negeri Sarawak forthwith'.

A [256] If the answer is in the affirmative, then following the decisions discussed thus far, the matters raised by the plaintiff are not justiciable. The court will therefore, not interfere and will instead, abide by the doctrine of parliamentary privileges.

...

B [332] It is my firm view that the question posed in the ministerial motion is a question which inextricably and intrinsically concerns membership of the State Assembly. Such a question is well within the mandate, authority, competence and jurisdiction of the State Assembly to question and deliberate, regardless when it arose so long as it falls within the terms of art 17; falling well within the application of *Lim Cho Hock* and the two *Fan Yew Teng* cases, as affirmed by the Federal Court C recently in *Teng Chang Khim v Badrul Hisham Abdullah*. More so, when the plaintiff is seeking to enjoy and continue to enjoy the privileges of membership of the State Assembly. The matters raised in the ministerial motion and the impugned decision reached are well and truly internal management matters within the business of the State Assembly, taken not even outside its walls but at one of its regular sittings. D Consequently, the impugned decision and the State Assembly as well as its members, enjoy parliamentary privilege rendering the matters therefore, not justiciable. To say otherwise, that the courts may scrutinise the ministerial motion and the impugned decision, leads necessarily to an adverse impact on the essential business of the State Assembly.

E MY DECISION

Jurisdiction of the Dewan Undangan Negeri Sarawak/purposive construction

F **[69]** The primary issue in these appeals is simply whether the DUN has the jurisdiction to disqualify the respondent in this case.

[70] The majority judgment penned by my learned brother Abdul Rahman Sebli FCJ, with respect, takes the stand that they are not prepared to read into G the Sarawak Constitution this notion of 'pre-' and 'post-election' disqualification. Having taken that stand, they are yet ready and willing to read into the Sarawak Constitution an implied power on part of the DUN to disqualify the first respondent as that is surely what the 'framers of the Sarawak Constitution' had intended.

H

[71] The aforesaid interpretation is premised on the use of the tool of construction or the so called 'purposive construction' on the words appearing in the statute book. I have no quarrel that the tool of purposive construction exists. But it is trite that the purposive construction tool can only be used where I there is ambiguity in the words appearing in the statute or those words connote more than one meaning. Here in my view there is no such ambiguity as clearly pointed out by the majority judgment in the Court of Appeal.

[72] With respect, reading something that is implied in a document as

opposed to purporting to *read something into* a document are two entirely distinct concepts. A proper and wholesome construction of the Sarawak Constitution against the Federal Constitution clearly suggests that the drafters of the Sarawak Constitution had intended to allow the Dewan the jurisdiction to determine post-election disqualifications only.

[73] Further, one will recall the majority decision of the Federal Court in *Public Prosecutor v Kok Wah Kuan* [2008] 1 MLJ 1 ('Kok Wah Kuan'). In rejecting the contention that judicial power is a corollary of separation of powers which doctrine is a basic feature of our Federal Constitution, the Federal Court purported to hold that ours is a system which does not strictly adopt separation of powers. With respect, the court overlooked the judgment of Azlan Shah FJ in *Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187 where His Lordship, while declining to accept the basic stricture doctrine, nonetheless expressly held that separation of powers, especially between the Judiciary and other arms of government is a fundamental tenet of our Constitution. This court ultimately embraced separation of powers and judicial power as part of the basic structure in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561; [2017] 5 CLJ 526 and *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545.

[74] The point here is that just because the Federal Constitution does not say something expressly, that in itself does not mean that it is not there, impliedly. If we study our Federal Constitution properly and appreciate it in context, then one would realise that there is implied in that supreme document the doctrine of separation of powers.

[75] The same is therefore true of the Sarawak Constitution if one harmonises art 118 of the Federal Constitution with art 19(1) of the Sarawak Constitution and realises that there was intended to be a pre and post-election regime. Thus, it is true that one cannot 'read into' the Sarawak Constitution the pre and post-election mechanism, because such a regime is already implied. Failing to recognise it is thus in fact ignoring what the Sarawak Constitution itself provides.

[76] Jurisdiction is a creature of statute. In the context of administrative law, the Executive have no inherent jurisdiction save what is conferred on them by law. See: *Pengarah Tanah Dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135 at p 148. The same must also be true of the legislative branch of government. The Constitution does not authorise the Legislature to exercise any form of inherent power. Their jurisdiction cannot be implied, unless the law very clearly allows such implication. The only body which has any inherent jurisdiction to do anything are the courts by virtue of

their role to dispense justice. Thus, the approach taken by the majority of implying that the drafters would have somehow intended to enable the Sarawak State Legislature to disqualify its members is, with the greatest of respect, not supported by the weight of constitutional and administrative law. Should the Legislature wish the power to determine pre-election disqualification, they need only insert that power by constitutional amendment. The courts are not, by the very essence of their judicial role, empowered to imply such powers for the Legislature (see: Supreme Court in *Public Prosecutor v Rajappan* [1986] 1 MLJ 152).

Pre and post-election disqualification

[77] The pre-election and post-election point may be explained by reference to two cases. The first is the decision of Azmi J (as he then was) in *Fan Yew Teng v Setia Usaha, Dewan Ra' ayat & Ors* [1975] 2 MLJ 40 ('Fan Yew Teng'). The other case is the decision of the Indian Supreme Court in *Election Commission, India v Saka Venkata Subba Rao* 1953 SCR 1144; 1953 AIR 210 ('*Rao*'s case').

[78] The facts in *Fan Yew Teng* were briefly these. Mr Fan became a Member of Parliament after a successful election. It was shortly after his election to Parliament that he was found guilty of sedition in the sessions court and sentenced with a fine of $2,000. The crucial issue for determination in the case was whether Mr Fan's Parliamentary seat became automatically vacant immediately after his conviction. It is apparent, as disclosed by the facts, that his disqualification happened after he was duly elected to Parliament.

[79] In his judgment, Azmi J analyzed arts 48(1) and 53 of the Federal Constitution which are substantially similar to arts 17(1) and 19(1) of the Sarawak Constitution. His Lordship made the following crucial observations, at p 41:

> As far as article 48(1)(e) is concerned, there can be no dispute that the plaintiff has been sentenced to a fine of not less than $2,000 and nor has he received a free pardon. It is therefore the contention of learned Counsel for the defendants that once a member of the House of Parliament has been convicted and sentenced to a fine of not less than $2,000 and has not received a free pardon, he becomes disqualified under article 48(1) and his seat shall become vacant by virtue of article 50(1). Learned Counsel for the plaintiff, however, argues that the plaintiff's conviction and sentence alone are not sufficient to disqualify him from his continued membership of the Dewan Ra'ayat and that the plaintiff is entitled to show cause against any move to exclude him from the Dewan under article 53 of the Federal Constitution. As to article 53, learned Counsel for the defendants argues that it only applies in cases where the disqualification is doubtful, but does not apply in the present case where the disqualification is a straight-forward one.

Before going into the merits of the conflicting arguments it is necessary to appreciate that article 48(1) applies to both pre-election and as well as to postelection disqualification. In short, any person who comes within one of the subclauses (a) to (f) of this article, will not be fit to be a candidate for membership of the Dewan Ra'ayat or be an appointee of the Dewan Negara; and further, if a sitting Member of Parliament incurs any of the disqualification mentioned in the aforesaid sub-clauses, and no question arises as to his disqualification, he will be disqualified.

Secondly, it is clearly obvious that articles 50(1) and 53, as opposed to article 48(1), apply only to postelection disqualification, ie disqualification arising after election of a person to the House of Representatives or appointment to the Senate.

Thirdly, it is also essential to bear in mind that, unlike the constitution of some countries with parliamentary system of government, our Constitution does not confer on the House of Representatives the power to decide elections in disputes, but only questions relating to the disqualification of members. In the case of an election to the House of Representatives, the question of pre-election disqualification including the question of an election on the ground of disqualification of a candidate is given to the High Court under article 118, and if the disqualification is established. The election shall be void under article 50(2). (Emphasis added.)

[80] The most pertinent observation is that our Federal Constitution does not confer on Parliament the jurisdiction to determine the validity of election results. That is a matter reserved exclusively for an election court as recognised under art 118 of the Federal Constitution.

[81] At this juncture, it must be understood that the list of disqualifying factors respectively in art 48(1) of the Federal Constitution and art 17(1) of the Sarawak Constitution apply to both pre-election and post-election situations. For example, a person who has been convicted of the relevant offence is prohibited from running for elections. It may also be the case that the person, at the time of election was not convicted of any such offence and that the conviction only happened *after* he became a member of Parliament. The only question is who ought to make the positive pronouncement of disqualification. According to Azmi J in *Fan Yew Teng*, in the case of the former; it would have to be a court duly constituted under art 118 of the Federal Constitution; and in the case of the latter, the House itself may take the necessary action.

[82] The above distinction may be further clarified by reference to *Rao*'s case. Briefly, these were the facts. Mr Rao had been convicted of an offence and was accordingly ordered to be imprisoned for a period of seven years but he was released early. The conviction was more than enough to disqualify him under the relevant provision of the Indian Constitution from contesting. Sometime after his release from prison, a by-election was held. Mr Rao contested and won. He had however, prior to contesting, applied to the Indian Election Commission for exemption from his disqualification under the relevant

A statute. Only after winning the election was he was informed that his application for exemption was disallowed. The Indian Election Commission accordingly invoked the relevant procedure under the Indian Constitution to have Mr Rao removed as a member of the State Assembly.

B **[83]** Mr Rao responded by filing an action at the High Court seeking to halt his removal. The learned High Court judge decided that Mr Rao's disqualification was a pre-election one and hence, the relevant procedure invoked by the Indian Election Commission did not apply to him. The matter was taken up on appeal to the Indian Supreme Court and was unanimously dismissed. This is what Patanjali Sastri CJ, in agreeing with the High Court held, in extenso:

> The Attorney-General argued that the whole fasciculus of the provisions dealing with 'disqualifications of Members', vis, Articles 190 to 193, should also be read together, and as Articles 191 and 193 clearly cover both pre-existing and supervening disqualifications, Articles 190 and 192 should be similarly understood as relating to both kinds of disqualification. According to him all these provisions together constitute an integral scheme whereby disqualifications are laid down and machinery for determining questions arising in regard to them is also provided. The use of the word 'become' in Articles 190 (3) and 192 (1) is not inapt, in the context, to include within its scope pre-existing disqualifications also, as becoming subject to a disqualification is predicated of 'a member of a House of Legislature', and a person, who, being already disqualified, gets elected, can, not appropriately, be said to 'become' subject to the disqualification as a member as soon as he is elected. The argument is more ingenious than sound.
>
> Article 191, which lays down the same set of disqualifications for election as well as for continuing as a member, and Article 193 which prescribes the penalty for sitting and voting when disqualified, are naturally phrased in terms wide enough to cover both re-existing and supervening disqualifications; but it does not necessarily follow that Articles 190(3) and 192(1) must also be taken to cover both. Their meaning must depend on the language used which, we think, is reasonably plain. In our opinion these two Articles go together and provide a remedy when a member incurs a disqualification after he is elected as a member. Not only do the words 'becomes subject' in Article 190 (3) and 'has become subject' in Article 192 (1) indicate a change in the position of the member after he was elected, but the provision that his seat is to become thereupon vacant, that is to say, the seat which the member was filling theretofore becomes vacant on his becoming disqualified, further reinforces the view that the Article contemplates only sitting member incurring the disability while so sitting.
>
> *The suggestion that the language used in Article 190 (3) can equally be applied to a pre-existing disqualification as a member can be supposed to vacate his seat the moment he is elected is a strained and far-fetched construction and cannot be accepted. The Attorney-General/ admitted that if the word 'is' were substituted for 'becomes' or 'has become' it would more appropriately convey the meaning contended for by him, but he was unable to say why it was not used.* (Emphasis added.)

[84] The above passage is more than clear for the proposition it makes. The majority in the present case attempts to distinguish *Rao*'s case on the supposed basis that:

(a) the facts of the above case are peculiar to it; and

(b) second, that the provisions of the Indian Constitution are different.

[85] I think such bases to distinguish *Rao*'s case from the present one are, with respect, unfounded. The key two articles which fell for consideration in *Rao*'s case were arts 191 and 192 of the Indian Constitution. Article 191 is not in contention in the sense that it sets out the disqualifying factors similar to our arts 48 and 17 respectively of the Federal and Sarawak Constitutions.

[86] Article 192 of the Indian Constitution, however, is distinct. Clauses (1) and (2) thereof provide as follows:

> (1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.
>
> (2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

[87] The factor which distinguishes arts 192 of the Indian Constitution from its Malaysian counterparts is who actually makes the decision to disqualify. In the case of India, the decision lies in the hands of the Governor of the State subject to the opinion of the Indian Election Commission. In the case of Malaysia, the power to disqualify members lies exclusively with Parliament (art 53 of the Federal Constitution), or in the case of the Sarawak State Legislature, the State Legislature (art 19 of the Sarawak Constitution).

[88] Perhaps an important distinguishing factor which suggests that there is a pre and post-election mechanism in India may arguably be art 193 of the Indian Constitution, which reads as follows:

> If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

[89] However, I do not think art 193 makes much difference. While there may be no like provision in the Federal Constitution, the decision was

ultimately made on an interpretation of the language employed in art 192(1) itself. In any event, the Sarawak Constitution contains art 20 the effect of which is similar to art 193 of the Indian Constitution. Speaking specifically on language, the Indian Supreme Court posited that the words 'has become' suggest that the disqualification should have happened while the person is a member. Meaning, the disqualification must have been a supervening one. In that sense, the article cannot apply to a pre-election disqualification. The Indian court suggested that the situation may have been different if the word 'is' was used as opposed to 'has become'. This situation is no different from art 19(1) of the Sarawak Constitution and I do not see why the rationale of the Indian Constitution ought not to apply with equal force.

[90] Again, for clarity, art 19(1) reads as follows:

> If any question arises whether the Speaker or a member of the Dewan Undangan Negeri *has ceased* to be qualified for appointment or election as such, the decision of the Dewan shall be taken and shall be final.

[91] The above to me fits squarely within the elucidations of Azmi J in *Fan Yew Teng* and Patanjali Sastri CJ in *Rao*'s case. Had the more generic word 'ceased' been used instead, or perhaps if the phrase, taking heed from *Rao*'s case, instead read 'is disqualified for appointment', there could have been considerable support for the view the Sarawak State Legislature has the jurisdiction to disqualify the first respondent irrespective of whether the disqualification was pre- or post-election.

[92] There are several other reasons suggesting that the existence of a pre and post-election regime is not a fanciful or invented insertion into the Sarawak Constitution but one which was deliberately intended by the framers of the Sarawak Constitution. This is in addition to the choice of language ie by deliberately employing the phrase 'has ceased'.

[93] Firstly, the pre and post-election dichotomy respects the doctrine of separation of powers. If I were to sustain the submission of the appellants it would mean that if in the event that the Election Court had held that the respondent is not disqualified person in the trial of election petition, the DUN would have a power to ignore the ruling of the Election Court and in fact can override that decision by tabling a ministerial motion as was done in this case. That proposition is a blatant disregard to the doctrine of separation of powers which I am not prepared to allow. It is also in disregard art 118 of the Federal Constitution.

[94] On a proper construction of the provisions of the Federal and Sarawak Constitution, there is clear separation of powers between the High Court and the House or Dewan when it comes to the determination of disqualification. Article 118 of the Federal Constitution stipulates that no election to the House of Representatives or to the Legislative Assembly of a State shall be called in question except by an election petition presented to the High Court having jurisdiction where the election was held. The language itself suggests that the power to determine the validity of elections (which necessarily includes pre-election disqualification), is a feature exclusive to the High Court. This accords well with use of the words 'has ceased' in art 19 to suggest that once a person is already a member, the validity of his membership post-election is to be decided by the Sarawak State Legislature. In this sense, there can be no conflict as there are in fact two different decision-makers each catered to a specific situation ie pre-election and post-election disqualification.

[95] The second reason also relates to the doctrine of separation of powers. Given the clear language of the art 19(1) of the Sarawak Constitution, it would be hard to escape the conclusion that the courts may extend the Dewan's jurisdiction beyond what the Constitution itself envisions. Doing so would be to play Legislature. To illustrate, this is what Patanjali Sastri CJ continued to say in *Rao*'s case:

> It was said that on the view that Articles 190(3) and 192(1) deal with disqualifications incurred after election as a member, there would be no way of unseating a member who became subject to a disqualification *after* his nomination and *before* his election, for, such a disqualification is no ground for challenging the election by an election petition under Article 329 of the Constitution read with section 100 of the Representation of the People Act, 1951.
>
> If this is an anomaly, it arises out of a lacuna in the latter enactment which could easily have provided for such a contingency, and it cannot be pressed as an argument against the respondent's construction of the constitutional provisions. *On the other hand, the Attorney-General's contention might, if accepted, lead to conflicting decisions by the Governor dealing with a reference under Article 192 and by the Election Tribunal inquiring into an election petition under section 100 of the Parliamentary statute referred to above.* (Emphasis added.)

[96] The first portion of the passage asserts that any lacuna in the law is for the Legislature to fill in. The courts cannot do it.

[97] Further and more pertinent to my second point, art 329 of the Indian Constitution expressly and exclusively enables a person to challenge an election result via an election petition much like art 118 of our Federal Constitution. This further suggests that there is clear separation of powers.

[98] It is not insignificant that there was in fact an election petition and the same was dismissed by the election court on a technicality. For clarity the grounds for the election petition reads as follows:

> Your Petitioner humbly states that the Respondent is disqualified to be elected in the election of the Sarawak State constituency of Pujut (N 74) Sarawak held on 7.5.2016 from 8.00 a.m. to 5.00 p.m. for the following reasons:-
>
> a. Your Petitioner recently discovered that at all material times, the Respondent had acquired an Australian Citizenship that entitled him to exercise his right as a citizen under Section 93 of Common wealth Electoral Act 1918;
>
> b. your Petitioner also discovered that by virtue of his Australian Citizenship, the Respondent till to date is a registered voter with the Australian Electoral Commission;
>
> c. these conducts of the Respondent is in direct violation of Articles 16 and 17(1)(g) of the Constitution of the State of Sarawak namely a person who has voluntarily acquired citizenship of, or exercised rights of citizenship in, any country outside the Federation or has made a declaration of allegiance to any country outside the Federation is disqualified from being elected as an elected Member of Dewan Undangan Negeri Sarawak;
>
> d. the nomination of the Respondent on 25.4.2016 was also ultra vires the Articles 16 and 17(1)(g) of the Constitution of the State of Sarawak;
>
> e. the declaration of the Respondent in Form 5A pursuant to Regulation 4(7) of Election (Conduct of Elections) Regulations 1981 on the nomination date 25.4.2016 was false and an absolute untruth;
>
> f. the Respondent had failed to inform the Election Commission that he is an Australian citizen and a registered voter with the Australian Electoral Commission to determine his status and qualification to stand as a candidate for Sarawak State election for the constituency of Pujut N.14;
>
> g. the Respondent had committed offences under Statutory Declaration Act 1960 and other relevant statutory provisions by signing a false declaration under Form 5A of the Elections (Conduct of Elections) Regulation 1981 in declaring that himself as a qualifiedperson to be elected as a Member of Dewan Undangan Negeri Sarawak; and
>
> h. the Respondent is completely an unqualified, unfit and untrustworthy person to be nominated and elected to represent the people of the constituency of Pujut (N. 74) Sarawak and ought not to have been returned as a member of Dewan Undangan Negeri Sarawak.

[99] The above grounds and reliefs are similar in nature as the ones sought in the MM which in substance called for the removal of the respondent in view of his acquired Australian citizenship. For clarity this is the MM which reads as follows:

Menteri Kewangan II dan Menteri Perdagangan Antarabangsa dan E-Perdangangan (YB Dato' Sri Wong Soon Koh): Tuan Speaker, this is a Ministerial motion understanding order 23(1)(a) to be read together with the standing order 3(12). Standing Order 40(10) and Article 19(1)(g) of the Constitution of the State of Sarawak. Tuan Speaker pursuing to Standing Order 23(1)(a), I moving the following motion:

> WHEREAS Article 17(1)(g) of the State of Sarawak Constitution states that a person is disqualified from being elected as an elected member of Dewan Undangan Negeri if he has voluntarily acquired citizenship of or exercised rights of citizenship in and has made declaration of allegiance to any country outside the Federation.
>
> AND WHEREAS by way of Statutory Declaration dated 22.4.2016, Honourable Member for Pujut declared that he has NOT lost the qualification to be elected as ADUN in breach of the Constitution.
>
> AND WHEREAS Member for Pujut acquired the Australian citizenship on 20.1.2010.
>
> AND WHEREAS Member for Pujut declared his allegiance to Australia at the time of acquiring the citizenship.
>
> AND WHEREAS Member for Pujut exercised his rights as a citizen by registering as a voter with the Australian Electoral Commission.
>
> AND WHEREAS Member for Pujut was declared bankrupt twice in Australia.
>
> AND WHEREAS Member for Pujut is completely unqualified, unfit and untrustworthy individual to be nominated and elected to represent the people of Sarawak.
>
> AND WHEREAS as a result of his voluntary acts, Member for Pujut has ceased to be member of Dewan Undangan Negeri Sarawak due to the breaches of Article 17(1)(g) of the Constitution.
>
> Therefore, it is moved that this House hereby resolves that:
>
> > Member for Pujut is disqualified under Article 17(1)(g) of the State of Sarawak Constitution to be a member and has ceased to be a member of the Dewan Undangan Negeri Sarawak forthwith.

[100] As stated above, the MM reflects what was asked for in the election petition which was dismissed by the election court. In my considered view, it is of no relevance that the election petition was dismissed due to a technicality. What is relevant is that there was no appeal by the appellants herein which in my view would simply mean that they accepted the decision of the election court and would be disbarred from bringing this matter before the DUN by virtue of the concept of res judicata. To decide otherwise would mean the respondents can have a second bite of the cherry where a normal litigant would be barred in court to do so. My view is consistent and in consonant with the doctrine of separation of powers.

[101] Thus, for the foregoing reasons, it is my considered view that as the provisions of the Sarawak State Constitution presently stand, there was no basis for the third appellant to raise the MM as art 19(1) of the Sarawak Constitution clearly does not confer power on the Sarawak State Legislature to determine pre-election disqualification.

[102] In the circumstances, I decline, simply in the guise of doing justice by the DUN on the facts of this case, to make any pronouncement that the DUN are implied to have some power which the very settled structure of our Federal and Sarawak Constitutions do not otherwise seem to imply.

Breach of natural justice

[103] Though this matter requires no deliberation from me in view of my finding that the DUN had no jurisdiction to entertain the MM, however for completeness and as it is a matter of public importance I intend to express my views on this issue.

[104] First and foremost, let me say this. It is without doubt that the concept of 'breach of natural justice' is one of the fundamental pillars of the Rule of Law which is part of the basic structure of our Federal Constitution. What that means is this. Though the separation of powers doctrine applies between the Judiciary and the Legislature, this separation in my view is subject to the Federal Constitution as it is the Supreme law of the land. In other words, if the respondent had not been given a fair hearing and thus became a victim of a breach of natural justice, there is no impediment to the court intervening as the Legislature is constitutionally bound to adhere to the Rule of Law. Any contrary view would lead to anarchy and lawlessness — a result which the courts must prevent at all cost. In the present case, the respondent had lost his right to represent the people of his constituency and they, the people, have spoken clearly whom they want as their representative. The rights affected are actually the rights of the voters in Pujut.

[105] The Legislature as well as the Executive are subject to the prohibitions prescribed in the Federal Constitution. I can do no better than to refer to what Barwick CJ said in *Cormack v Cope* (1974) 131 CLR 432:

> ... [w]hilst it may be true the Court will not interfere in what I would call the intra-mural deliberative activities of the Parliament, it has both a right and a duty to interfere if the constitutionally required process of law-making is not properly carried out ...

[106] What I am here saying, or advocating is purely and simply a jurisdictional point. Any statutory body would be acting without jurisdiction if they acted in breach of the Rule of Law, in this case, the failure to accord the respondent the right to be heard.

[107] Was there a breach here? There was a finding of fact by the trial judge, hence the question is whether those findings are so perverse that they do not stand up to reasonableness. Having looked at the *Hansard*, I see no reason to depart from the findings of the trial judge.

[108] Much has been made of the fact that the respondent was less than candid in his replies to questions raised by the honourable members in the DUN. It was not, with respect, a simple answer of 'Yes' or 'No' to the question of whether he had acquired Australian citizenship. It is more than that as we have found out. It was a question of jurisdiction of the DUN. He may have been less than candid, but the point of the whole matter is whether he was given a chance to defend himself in a manner as was done in this originating summons in the High Court, Court of Appeal and this court.

[109] The fact of the matter is that five out of the 13 judges are of the opinion that the DUN did not have the jurisdiction to disqualify him. This divergence of opinions by the judges, including that of Chief Justice of the Federal Court who found that the DUN lacked jurisdiction, speaks for itself. It is just not a simple matter at all. And to deprive the respondent of having the requested half an hour to prepare his defence is, in my view, a breach of natural justice.

[110] I am fully aware that the Legislature operates independently but no statutory body in this country is immune from the doctrine of the Rule of Law, a concept which is very much part of the Federal Constitution. The might of a super majority of a sitting government in the House, with respect, must be used within the confines of the Federal Constitution. As pointed out by the learned judge, no prejudice would be caused to anyone had the respondent be given the half hour requested.

[111] The sum of it all is aptly put by the learned judge when he pointed out that the issue of jurisdiction should have be ventilated in the election court and not in the DUN.

CONCLUSION

[112] The majority seems to be persuaded by the notion that the first respondent ought not to be allowed to continue to sit in the Dewan as a State Assemblyman by virtue of art 17(1)(g) of the Sarawak Constitution. This is something all can sympathise with. However, the larger and pivotal question is

whether the law allows it. In my construction of the Sarawak Constitution, there is indeed implied a pre and post-election regime. Refusing to recognise this is refusing to accept that the Sarawak Constitution says what it says.

[113] Next, the majority decision, in my respectful view, sets two dangerous precedents. Generally, it suggests that courts may purport to insert their own subjective interpretation into written law under the guise of a 'purposive reading' which is otherwise unsupported by the law. Specifically, the decision suggests that the jurisdiction of a non-judicial body which is otherwise circumscribed strictly by law, may be extended by implication and against the grain of the structure the drafters had themselves intended. As I have said, such approach is entirely unsupported by settled law and principle.

[114] This is simply a case which requires the court to give to the words used their natural meaning as they do not connote any ambiguity at all. The words say what they say, and they mean what they say. Not to give the words their natural meaning would be giving a meaning not reflected in the words which the court cannot and must not do as its role is to interpret and not make laws. With great respect, it can be said that the English language has been turned 'upside down'. Purposive construction has never meant 'construction with a purpose'. One cannot bend the language of an Act, much less a Constitution, on a supposition that such an interpretation is what the drafters had intended.

[115] Seven leave questions were posed, and they are as follows:

(1) whether the Dewan Undangan Negeri of Sarawak ('the Dewan') has the power under art 19(1) of the Sarawak Constitution to make a decision on the continued membership of an elected member whenever a question is raised in the State Assembly as to whether that member is qualified for election to the State Assembly under art 17(1)(g);

(2) whether the business or proceedings of the Dewan (including but not limited to the Ministerial Motion on 12 May 2017) is justiciable, in view of the provisions inter alia of art 19(1) of the Sarawak Constitution read with art 72(1) of the Federal Constitution;

(3) whether upon proper interpretation of art 17(1)(g) of the Sarawak Constitution, a disqualification for election to the State Assembly resulting from voluntary acquisition of foreign citizenship and the exercise of rights accorded to a foreign citizen in that foreign country, could be removed and ceased in the absence of provision in art 17(3) or any article of the Sarawak Constitution for the removal or cessation of such disqualification;

(4) whether there is any conflict between art 17(1)(g) of the Sarawak Constitution and art 19(1) of the Sarawak Constitution and art 118 of the Federal Constitution;

(5) whether or not an election petition pursuant to art 118 of the Federal Constitution is the only mode that can be utilised to challenge the appointment of a member of the Dewan;

(6) whether a Malaysian citizen who had acquired foreign citizenship but renounced it before the nomination of an election is qualified to be nominated as a candidate for an election in the light of art 17(1)(g) of the Sarawak Constitution; and

(7) whether the Dewan has the jurisdiction to decide on the disqualification of an elected member who had previously acquired a foreign citizenship though renounced it before the nomination of an election. If the answer is in the affirmative, whether such a decision of the Dewan in justiciable in the light of art 19 of the Sarawak Constitution.

[116] For the reasons I have stated in this judgment, and if I may I echo the learned Chief Justice, these appeals may be determined by answering the first part of leave question 7 in the negative. This leaves it unnecessary to answer the rest of the leave questions.

[117] Based on the foregoing, it is my considered view that the majority judgment of the Court of Appeal rightly identified the sole issue to be one of jurisdiction and that the right conclusions were arrived at on the correct application of the law. The issue of immunity of the DUN under art 72(1) of the Federal Constitution does not arise because the Dewan in the first place did not have jurisdiction to disqualify the respondent. I therefore find there to be no other alternative but to affirm the majority decision and judgment of the court below, and I accordingly dismiss these appeals with no order as to costs.

Abdul Rahman Sebli FCJ (delivering majority judgment):

[118] There were three appeals before us and all three concerned the power of the Dewan Undangan Negeri of Sarawak ('the Dewan') to disqualify a member for having voluntarily acquired foreign citizenship prior to his election to the House. The first appeal was by the Speaker of the Dewan, Datuk Amar Mohamad Asfia Awang Nassar, the second by the Dewan itself and the third by Dato Sri Wong Soon Koh, a Minister in the State Cabinet at the material time.

[119] The facts are simple and straightforward. The respondent, Ting Tiong Choon is a Malaysian citizen of Sarawak origin. He graduated with MBBS medical degree in 1992 from the University of New South Wales, Australia. On 20 January 2010, he acquired the citizenship of Australia but renounced it five

A years later in 2015. His renunciation was accepted by the Australian Government with effect from 4 April 2016. 21 days later, ie on 25 April 2016, the respondent was nominated as a candidate together with three others to contest the State Constituency of N17 Pujut in the Sarawak State General Election.

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[120] As part of the nomination process for the General Election, the respondent affirmed a statutory declaration (Borang 5A) on 22 April 2016 to the effect that he had not lost his eligibility to be a member of the Dewan, meaning to say he was not a person who was disqualified for election to the C House. On 7 May 2016, he was returned as the winner by polling 8,899 votes, giving him a majority of 1,759 votes.

[121] On 16 June 2016, a defeated candidate, one Hii King Chiong, filed an D election petition against the respondent seeking a declaration that the respondent was not duly elected or ought not to have been returned on the ground that he was a person who was 'disqualified for being elected as an elected member of the Dewan Undangan Negeri' for having voluntarily acquired Australian citizenship. This ground falls under art 17(1)(g) of the E Constitution of the State of Sarawak ('the Sarawak Constitution'), which reads:

> 17 (1) Subject to the provisions of this Article, a person is disqualified for being elected as an elected member of the Dewan Undangan Negeri if —
>
> (g) he has voluntarily acquired citizenship of or exercised rights of citizenship in, any F country outside the Federation or has made a declaration of allegiance to any country outside the Federation.

[122] The equivalent provision in the Federal Constitution is art 48(1)(f) which reads:

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> 48 (1) Subject to the provisions of this Article, a person is disqualified for being a member of either House of Parliament if —
>
> (f) he has voluntarily acquired citizenship of, or exercised rights of citizenship in, any country outside the Federation or has made a declaration of allegiance to any H country outside the Federation.

[123] The appellants were not parties to the election petition filed by Hii King Chiong. On 14 October 2016, the Election Court struck out the petition on a technical ground without hearing the merits of the petition and awarded I costs of RM100,000 to the respondent payable jointly and severally by the first and second appellants (the first and second defendants at the Election Court). Hii King Chiong did not appeal against the decision.

[124] On 4 May 2017, the Royal Malaysian Police through its Director of

Criminal Investigation informed Dato Sri Wong Soon Koh by letter that the respondent had renounced his Australian citizenship with effect from 4 April 2016 but were unable at that juncture to ascertain whether the respondent had exercised the right of citizenship of another country or had made any declaration of allegiance to any country outside Malaysia.

[125] On the morning of 12 May 2017, Dato Sri Wong Soon Koh by way of a Ministerial Motion dated 12 May 2017 moved the Dewan to disqualify the respondent from being a member of the House on the same ground that the petitioner Hii King Chiong relied on in his election petition against the respondent, ie that the respondent was a person who was disqualified for election to the Dewan for having voluntarily acquired Australian citizenship.

[126] The Ministerial Motion was put to a vote and the Dewan voted 70 to 10 in favour of disqualifying the respondent. Thereupon the speaker announced that the respondent was disqualified forthwith and ceased to be a member of the Dewan with immediate effect. It was a decision that was made by the Dewan pursuant to art 19(1) of the Sarawak Constitution, which provides as follows:

> 19 (1) If any question arises whether the Speaker or a member of the Dewan Undangan Negeri has ceased to be qualified for appointment or election as such, the decision of the Dewan shall be taken and shall be final:
>
> Provided that this Article shall not be taken to prevent the practice of the Dewan postponing a decision in order to allow for the taking or determination of any proceedings that may affect the decision (including proceedings for the removal of the disqualification).

[127] On 7 June 2017, the respondent filed an originating summons in the High Court at Kuching to challenge the Dewan's decision to disqualify him as an elected member. He succeeded. On 17 June 2017, the Kuching High Court allowed the respondent's originating summons and held as follows:

(a) that the disqualification of the respondent as a duly elected member of the Dewan for the State Constituency of N17 Pujut was null and void;

(b) that the disqualification of the respondent was against the rules of natural justice; and

(c) that the disqualification of the respondent by the Dewan was in contravention of the Sarawak Constitution and/or art 118 of the Federal Constitution.

[128] Dissatisfied with the decision, the appellants appealed to the Court of Appeal. Their appeals were heard on 26 October 2017 and dismissed on 13 July 2018 by a majority decision, hence the present appeals before us.

[129] In essence, the majority comprising Abang Iskandar Abang Hashim JCA (as His Lordship then was) and Harmindar Singh Dhaliwal JCA held as follows:

(a) the respondent was a disqualified person by operation of art 17(1)(g) of the Sarawak Constitution;

(b) art 17(1)(g) of the Sarawak Constitution is applicable to a person who suffers disqualification prior to an election as well as to an elected member of the Dewan, that is to say post-election;

(c) art 19(1) of the Sarawak Constitution only concerns supervening disqualification, that is to say disqualification that was incurred by a member after he was elected to the Dewan;

(d) because art 19(1) of the Sarawak Constitution only applies to supervening disqualification, the Dewan had no power, authority and jurisdiction to decide on disqualification under art 17(1)(g) of the Sarawak Constitution where a person incurs the disqualification before his election to the Dewan;

(e) the Dewan only has power, authority and jurisdiction to decide on disqualification under art 19(1) of the Sarawak Constitution when a member incurs the disqualification after his election to the Dewan;

(f) for pre-election disqualification under art 17(1)(g) of the Sarawak Constitution, the issue can only be dealt with by the election judge pursuant to art 118 of the Federal Constitution read with s 32(e) of the Election Offences Act 1954;

(g) the Ministerial Motion dated 12 May 2017 had gone to aver that the respondent had ceased to be a member of the Dewan which was within the province of art 18(2)(a) of the Sarawak Constitution which is a post-election disqualification, meaning the respondent had incurred the disqualification after he was elected to the Dewan when, in fact, the respondent was a member of the Dewan with a pre-election disqualification; and

(h) the matter of privilege or immunity under art 72 of the Federal Constitution could not apply to the Dewan in passing the Ministerial Motion on 12 May 2017 as the Dewan did not act within its power as conferred on it by the Sarawak Constitution in removing the respondent as a member of the Dewan.

[130] It is clear from the grounds that the majority decision was based solely on a jurisdictional point. Given their view on jurisdiction, the majority saw no necessity to delve into the issue of justiciability under art 72(1) of the Federal Constitution raised by the appellants save to say that it had no application due to the fact that the Dewan had acted in excess of its power in disqualifying and

removing the respondent from the House. As for the issue of breach of the rules of natural justice raised by the respondent, the majority decided not to deal with the matter altogether.

[131] Mary Lim Thiam Suan, JCA who gave a dissenting judgment proffered, in essence, the following reasons for her decision:

(a) arts 17(3), (4) and (5) of the Sarawak Constitution do not provide for the removal of or the taking into effect of the disqualification specified under art 17(1)(g) of the Sarawak Constitution which deals with a person voluntarily acquiring citizenship outside Malaysia or has made a declaration of allegiance to any country outside Malaysia;

(b) the Dewan cannot have as its members, persons who have voluntarily acquired or exercised rights of citizenship in or to any country except Malaysia. When a Malaysian citizen chooses to be a member of the Dewan, the disqualification conditions in art 17(1)(g) of the Sarawak Constitution are unequivocal and uncompromising in that, where a Malaysian citizen has committed or done any of the acts mentioned in art 17(1)(g) of the Sarawak Constitution, such member is disqualified;

(c) the effect of the Sarawak Constitution, including art 19(1), was that the Dewan is vested with the jurisdiction to decide on the disqualification of the respondent;

(d) art 118 of the Federal Constitution deals with the challenge against an election result by way of a petition and it does not make any reference to challenge of disqualification of members of the Dewan;

(e) the Ministerial Motion tabled by the appellant does not question the outcome of the election but it questions the qualification of the respondent as a member of the Dewan, whether the respondent had met the terms in art 16 read with art 17(1)(g) and whether the respondent had ceased to qualify. Under art 19(1), a decision on the qualification of membership may be taken by the Dewan itself by its own members;

(f) the Dewan has power and jurisdiction to deal with the question of qualification;

(g) by virtue of art 19(1) of the Sarawak Constitution, the decision of the Dewan is non-justiciable;

(h) in matters properly within the internal management and competence of the Dewan, the Dewan is entitled to the protection of parliamentary privilege as provided by art 72(1) of the Federal Constitution and the protection of art 19(1) of the Sarawak Constitution;

(i) the right to sit in and be a member of the Dewan is part and parcel of parliamentary privilege and such privilege is not respected by arguing that the court has no jurisdiction to examine such privilege;

(j) the court should respect such privilege and not interfere in any parliamentary proceedings, internal management or core essential business of the Dewan where such interference will impact adversely on the core or essential business of the Dewan; and

(k) there is no provision in either the Sarawak Constitution or the Federal Constitution to suggest that the power to decide on the question of disqualification is given to any other person or entity, including the Election Court.

[132] Of significance to note is that both the majority and the minority ruled that the respondent was a disqualified person by operation of art 17(1)(g) of the Sarawak Constitution and that the disqualification was not removable, not redeemable and not forgivable. Effectively this means that the respondent's pre-election disqualification, being not removable, not redeemable and unforgivable, was carried over to his appointment as a member of the Dewan. Abang Iskandar Abang Hashim JCA writing for the majority made this clear in para 29 of his judgment:

> [29] It is one of the key arguments advanced by the Defendants that the disqualification with which the plaintiff was concerned had centred on art 17(1)(g) of the Sarawak Constitution, namely for having voluntarily acquired a foreign citizenship of country outside of the Federation of Malaysia, to wit, the Australian citizenship. According to the defendants, this disqualification under art 17(1)(g) is a disqualification of such a nature which is not removable or redeemable, unlike other disqualifications listed under art 17(1). Paragraph (3) to art 17 was referred to and it was submitted to us that paragraph (3) did not forgive a person similarly circumstanced as the plaintiff. In the context of paragraph (3) a foreigner who becomes a Malaysian citizen is not disqualified despite what he did before he becomes a Malaysian citizen. With respect I agree with the defendant's contention on this issue ... in that the Plaintiff was a disqualified *person* by operation of paragraph (1)(g) of art 17 of the Sarawak State Constitution. Clearly the plaintiff was not a person envisaged by art 17(3) who could find solace in its benevolent embrace.

[133] At para 99, the learned judge emphatically drove home the point:

> [99] In sum, I agree with the Defendants that the Plaintiff had committed a disqualifying act as a person, under art 17(1)(g) of the Sarawak Constitution. I agree too, that such an act incurred under the said provisions as contained in art 17(1)(a) is one that cannot be forgiven, not even under art 17(3) of the said Sarawak State Constitution.

[134] What appears from a reading of these two paragraphs is that the

learned judge placed particular importance on the difference between the respondent's capacity as a 'person' before the election and his capacity as a 'member' of the Dewan after his election. The imputation is that since the respondent as a 'person' was not a 'member' of the Dewan when he committed the act of disqualification under art 17(1)(g) of the Sarawak Constitution, he was not subject to the jurisdiction of the Dewan under art 19(1).

[135] It is pertinent to note in this regard that all three judges of the Court of Appeal had ruled that the respondent's disqualification under art 17(1)(g) was continuing and unforgivable. This ruling was clearly adverse to the respondent, yet he did not appeal or cross-appeal against the decision. The present appeals must therefore be decided on the premise that the respondent was a disqualified person both before and after his election to the Dewan and that the disqualification was a continuing disqualification for the purposes of art 17(1)(g) and art 19(1) of the Sarawak Constitution.

[136] It was not permissible for the respondent to mount a collateral attack on the ruling in the appeals before us as it was not a ruling that was null and void and of no effect that could be assailed and set aside without the need to file an appeal: see *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393; [1998] 2 CLJ 75.

[137] There were seven leave questions of law for our determination, as set out below:

(1) whether the Dewan has the power under art 19(1) of the Sarawak Constitution to make a decision on the continued membership of an elected member whenever a question is raised in the Dewan as to whether that member is qualified for election to the Dewan under art 17(1)(g) of the Sarawak Constitution;

(2) whether the business or proceedings of the Dewan (including but not limited to the Ministerial Motion on 12 May 2017) is justiciable, in view of the provisions inter alia of art 19(1) of the Sarawak Constitution read with art 72(1) of the Federal Constitution;

(3) whether upon a proper interpretation of art 17(1)(g) of the Sarawak Constitution, a disqualification for election to the Dewan resulting from voluntary acquisition of foreign citizenship and the exercise of rights accorded to a foreign citizen in that foreign country, could be removed and ceased in the absence of provision in art 17(3) or any article of the Sarawak Constitution for the removal or cessation of such disqualification;

(4) whether there is any conflict between art 17(1)(g) and art 19(1) of the Sarawak Constitution and art 118 of the Federal Constitution;

(5) whether or not an election petition pursuant to art 118 of the Federal Constitution is the only mode that can be utilised to challenge the appointment or election of a member of the Dewan;

(6) whether a Malaysian citizen who had acquired a foreign citizenship but renounced it before the nomination of an election is qualified to be nominated as a candidate for an election in the light of art 17(1)(g) of the Sarawak Constitution; and

(7) whether the Dewan has the jurisdiction to decide on the disqualification of an elected member who had previously acquired a foreign citizenship though renounced it before the nomination of an election. If the answer is in the affirmative, whether such decision of the Dewan is justiciable in the light of art 19 of the Sarawak Constitution.

[138] Questions (1), (2), (4), (5), (6) and (7) are inter-related. They relate one way or another to the issue of jurisdiction. I shall begin with this poser: can a person who is disqualified for election to the Dewan continue to sit in the Dewan as an elected member? The majority, while agreeing that the respondent was a disqualified person by operation of art 17(1)(g) of the Sarawak Constitution, nevertheless answered the question in the affirmative for the reason that art 19(1) does not clothe the Dewan with the jurisdiction to disqualify and remove the respondent from the House.

[139] The factual foundation on which the majority came to the conclusion was that the disqualifying act of acquiring Australian citizenship by the respondent was committed before he was elected as a member of the Dewan and not during the currency of his tenure. What the majority did was to draw a demarcation line between pre-election disqualification and post-election disqualification. This ties with the importance placed by the majority on the difference between the respondent's capacity as a 'person' before the election and his capacity as a 'member' of the Dewan after the election.

[140] The rationale that underpins the reasoning of the majority is encapsulated in the following pronouncement by Abang Iskandar Abang Hashim JCA in para 93 of his grounds of judgment:

> To go backwards in time and then consider an incidence of disqualification prior to the election would amount to a determination of the disqualification of a *person*, as opposed to that of a *member*. With respect, in fact, to go back in time and deal with a disqualification that was incurred long before a person got elected as a member would amount to an overreach by the Dewan which, in my view can find no constitutional support or justification within the context of the Sarawak State Constitution. (Emphasis added.)

[141] The ramification of the decision is that a 'person' who is not even

qualified for election to the Dewan but who somehow manages to get appointed to the Dewan can remain in the Dewan as an elected 'member' at his pleasure and there is absolutely nothing the Dewan can do to remove him from the House. Its a *fait accompli*.

[142] That could not have been what the framers of the Sarawak Constitution intended when formulating art 19(1). With the greatest of respect to the majority, such construction of art 19(1) must be rejected as it leads to an absolute absurdity. A scenario that comes to mind is a situation where debates in the Dewan to chart the future direction of Sarawak are articulated by persons who are not even eligible to stand for election to the august House. That will be quite a spectre to behold.

[143] The flaw in the majority's reasoning is that it failed to take into account the fact that the respondent was a disqualified person both before and after his appointment to the Dewan. When he was appointed to the Dewan, the respondent came with a pre-existing disqualification which he incurred prior to his appointment to the House, which means he was already suffering from a disqualification during the currency of his tenure and not only before he was appointed to the Dewan. It was therefore fundamentally wrong for the majority to presuppose that the respondent was only suffering from pre-election disqualification and not post-election disqualification.

[144] The operative words in art 17(1)(g) are 'has voluntarily acquired'. It is a past participle that refers to a past event. Thus, a person who has in the past voluntarily acquired foreign citizenship and therefore disqualified for election to the Dewan has no right to remain in the Dewan as an elected member unless his disqualification has been removed or has ceased to have effect. There is no evidence that the respondent's disqualification had been removed or had ceased to have effect when he was appointed to the Dewan.

[145] The language of art 17(1)(g) of the Sarawak Constitution is plain and unambiguous. There is only one meaning to be ascribed to the provision, and that is, a person who is otherwise eligible for election to the Dewan but who has since become disqualified for having committed an act of disqualification under the art 17(1)(g), loses his eligibility to stand for election to the House.

[146] By parity of reasoning, if such person has lost his eligibility to stand for election to the Dewan, *a fortiori* he must have lost his eligibility to be appointed to the Dewan as an elected member. It is palpably wrong and goes against the spirit of art 17(1)(g) to allow such disqualified person to remain in the Dewan. That will defeat the whole purpose of going through the election process, which is to appoint only qualified persons to the House as elected members. The fact that his election to the Dewan has not been voided by the Election

Court does not legitimise his continued presence in the Dewan if otherwise he remains a person who is disqualified for election to the House.

[147] The object behind art 17(1)(g) read with art 19(1) of the Sarawak Constitution is clear, which is to prevent a disqualified person from getting his way into the Dewan and to remain in the House as an elected member. It will be a strange working of the law if a disqualified person can legitimately sit in the House as an elected member and enjoy all the privileges accorded to a member. That will render art 17(1)(g) and art 19(1) completely otiose and denuded of all meaning, thus giving the wrong impression that they were enacted without any purpose in mind, contrary to an established principle of statutory interpretation that the Legislature does not legislate in vain. Article 19(1) must be read harmoniously with art 17(1)(g) and not in isolation.

[148] In *James v Commonwealth of Australia* [1936] AC 578 at p at 613, Lord Wright, inter alia, said:

> The question, then, is one of construction, and in the ultimate resort must be determined upon the actual words used, read not in vacuo but as occurring in a single complex instrument, in which one part may throw light on another. The Constitution has been described as the federal compact, and the construction must hold a balance between all its parts.

[149] This court in *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd (Bar Council Malaysia, intervener)* [2004] 2 MLJ 257; [2004] 1 CLJ 701 took a similar approach where Augustine Paul JCA (as he then was) delivering the judgment of the court adopted the following rule of constitutional construction expounded by the learned authors of *Bindra's Interpretation of Statutes* (7th Ed) at pp 947–948:

> The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument (*Old Wayne etc Association v McDonough* SI L ed 345; *Doconers v Bidwell* 82 (US) 244:45 L ed 1088; *Myers v United States* 272 US 52:71 L ed 60, 180). An elementary rule of construction is, if possible, effect should be given to every part and every word of a Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous (*Williams v United States* 289 US 553:77 L ed 1372; *Marbury v Madison* I Cranch (US) 137:2 L ed 60; *Myers v United States* 272 US 52:71 L ed 60; *United States v Buffer* 297 U SI:80 L ed 477).

[150] In *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, Raja Azlan Shah Ag LP (as His late Royal

Highness then was) made the following pertinent observations on the proper way to interpret a constitution:

> In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way 'with less rigidity and more generosity than other statutes' (see *Minister of Home Affairs v Fisher*). A constitution is *sui generis*, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: 'A Constitution is a legal instrument given rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have been given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving recognition and effect to those fundamental rights and freedoms.' The principle of interpreting Constitutions 'with less rigidity and more generosity' was again applied by the Privy Council in *Attorney General of St Christopher, Nevis and Anguilla v Reynolds*.

[151] The word 'member' wherever it appears in the Sarawak Constitution can only refer to a member who is qualified for election to the Dewan and to no others. There is a difference between a person who is unqualified for election and a person who is disqualified for election. The respondent falls under the second category, having committed an act of disqualification under art 17(1)(g).

[152] As for the issue of jurisdiction, there can be no argument that art 19(1) of the Sarawak Constitution confers on the Dewan the jurisdiction to decide, 'If any question arises', whether the speaker or a member (of which the respondent is one) has ceased to be qualified for appointment or election to the Dewan, and that once a decision is made, the decision is final.

[153] In the present case, the question had, as a matter of law, arisen in the Dewan whether the respondent, by reason of his disqualification under art 17(1)(g) of the Sarawak Constitution, had 'ceased to be qualified', meaning to say no longer fit to remain as an elected member of the Dewan.

[154] It is to be noted that art 19(1) imposes on the Dewan the duty to take the decision whenever a question of the qualification of the speaker or a member 'arises', which means the Dewan has no discretion in the matter but to take the decision. The provision is couched in mandatory terms ('the decision of the Dewan *shall* be taken'). Therefore, the Dewan was merely obeying the mandate of art 19(1) when it commenced proceedings against the respondent

after Dato Sri Wong Soon Koh tabled the Ministerial Motion to disqualify him from being a member of the Dewan. The respondent cannot be heard to say that he does not come under the purview of art 19(1), unless he admits that he is not a member of the House.

[155] It is clear that the Dewan was acting within the four corners of its jurisdiction, power and authority when it decided to vote out the respondent by a majority of 70 to 10. The Dewan did not act in excess of its power, contrary to the submission of learned counsel for the respondent and the finding of the majority.

[156] The respondent however argued, which argument was embraced by the High Court and the majority of the Court of Appeal, that since the respondent's disqualification was a pre-election disqualification and not a post-election disqualification, only the Election Court had the jurisdiction to decide on the respondent's qualification as an elected member of the Dewan, citing art 118 of the Federal Constitution read with s 32(e) of the Election Offences Act 1954 ('the Election Offences Act'). The two provisions are reproduced below:

> Article 118 of the Federal Constitution
>
> No election to the House of Representatives or to the Legislative Assembly of a State shall be called in question except by an election petition presented to the High Court having jurisdiction where the election was held.
>
> Section 32(e) of the Election Offences Act
>
> The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:
>
> (e) that the candidate was at the time of his election a person disqualified for election.

[157] Reliance was placed by learned counsel for the respondent on the then Supreme Court case of *Election Commission, Malaysia v Abdul Fatah bin Haji Haron* [1987] 2 MLJ 716; [1987] CLJ Rep 92 and the Indian Supreme Court case of *NP Ponnuswami v Returning Officer, Namakkal Constituency & Ors* 1952 3 SCR 218 for the proposition that art 118 of the Federal Constitution has the effect of ousting the jurisdiction of the Dewan and indeed of all courts other than the Election Court.

[158] The first thing to note with regard to art 118 of the Federal Constitution is that it does not confer jurisdiction on the Election Court. Even if art 118 is not there in the Federal Constitution, the Election Court is still vested with jurisdiction to hear election petitions. What art 118 does is to

prescribe the mode for challenging an election result, which must be done by way of an election petition and by no other mode. A

[159] By way of comparison, art 19(1) of the Sarawak Constitution is not concerned with challenging the result of an election, which has come to pass and the winning candidate has duly been appointed to the Dewan as an elected member. Rather, it is a provision that empowers the Dewan to decide, 'If the question arises', on the qualification of the speaker or a member to continue to remain in the Dewan after his appointment to the House. B

C

[160] Thus, the difference between the two constitutional provisions is that while art 118 of the Federal Constitution is concerned with the mode of challenging the result of an election, art 19(1) of the Sarawak Constitution is concerned with the power of the Dewan to disqualify and remove from the House the speaker or a member who has ceased to be qualified for appointment or election to the House. This process has nothing to do with challenging the result of an election. Indeed, the Ministerial Motion tabled by Dato Sri Wong Soon Koh was not to question the outcome of the election result but to decide on the respondent's right to remain in the Dewan as an elected member of the House. D E

[161] It is important to appreciate that it is not within the power of the Election Court to disqualify or to remove the speaker or any elected member from the House of Parliament or the State Legislatures. Its power is only to declare an election void if there had been a breach of s 32 of the Election Offences Act. That is the jurisdictional limit of the Election Court's power. The power to disqualify the speaker or a member lies with the respective Houses of Representative which in the case of Sarawak is the Dewan. As observed by Mohamed Azmi J (as he then was) in *Fan Yew Teng v Setia Usaha, Dewan Ra' ayat & Ors* [1975] 2 MLJ 40: F G

> I find no other provision in the Constitution to suggest that the power to decide on question of disqualification being given to any other body or person.

[162] It is therefore untenable for the respondent to argue that art 118 of the Federal Constitution read with s 32(e) of the Election Offences Act ousts the jurisdiction of the Dewan and that consequently a member of the Dewan can only be disqualified and removed from the House by an election judge by way of an election petition and not by way of proceedings under art 19(1) of the Sarawak Constitution. H I

[163] Clearly, there is no conflict between the two constitutional provisions and art 118 of the Federal Constitution does not override or supersede art 19(1) of the Sarawak Constitution. For this reason, I find no merit in the

respondent's argument that art 19(1) of the Sarawak Constitution is void for being inconsistent with art 118 of the Federal Constitution.

[164] It is interesting to note in passing that the requirement of art 118 of the Federal Constitution had in fact been adhered to when the defeated candidate, Hii King Chiong filed the election petition to nullify the respondent's election except that it was knocked out on a technicality. The fact that there was no appeal against the striking out order is of no consequence because the requirement of art 118 of the Federal Constitution had been adhered to. Further, it remains pure speculation which way the result of the election petition would have gone had the merits of the petition been considered by the election judge.

[165] Assuming for a moment that the petition was dismissed on the merits instead of being struck out on a technicality and the respondent was accordingly appointed to the Dewan as an elected member of the House, would that bar the Dewan from initiating proceedings to disqualify the respondent from being a member of the House under art 19(1) of the Sarawak Constitution? I do not think so because the question whether a member continues to be qualified as an elected member of the Dewan after his appointment to the House is the sole prerogative of the House to decide under art 19(1) of the Sarawak Constitution. The member's remedy if he is dissatisfied with the decision is to bring the matter to court. In any event, being a non party to the election petition filed by Hii King Chiong, the Dewan was not bound by the decision of the Election Court.

[166] With due respect to the learned lead counsel for the respondent, his argument that the jurisdictional parameters of the Dewan under art 19(1) of the Sarawak Constitution is confined to post-election disqualification and not to pre-election disqualification is without legal basis. There is nothing in the Sarawak Constitution or the Federal Constitution to warrant such demarcation of jurisdiction. Article 19(1) must be given a purposive interpretation which, if adopted, confers on the Dewan the jurisdiction to determine whether the speaker or a member should vacate his seat whenever the question of his qualification 'arises'.

[167] I am inclined to agree with Datuk Talat Mahmood, the learned State Attorney General that the jurisdiction of the Dewan under art 19(1) does not depend on whether the act of disqualification occurs pre-election or post-election but at the point of time 'If any question arises' whether the speaker or a member of the Dewan has ceased to be qualified for appointment or election to the House.

[168] A member 'has ceased to be qualified' within the meaning and

contemplation of art 19(1) of the Sarawak Constitution if his continued presence in the Dewan has become untenable due to his status as a person who is not qualified for election to the Dewan by operation of art 17(1)(g), regardless of whether he commits the disqualifying act before or after his election to the House. The reason for this is very simple. Membership to the Dewan is reserved exclusively for those who are qualified for election to the Dewan and not for those who are not even eligible to stand for election to the House for having committed a disqualifying act under art 17(1)(g).

[169] The majority relied heavily on the decision of the Supreme Court of India in *Election Commission, India v Saka Venkata Subba Rao* 1953 SCR 1144; 1953 AIR 210 to decide on jurisdiction. In that case, both the High Court of Madras and the Supreme Court of India held that since the alleged disqualification of the respondent arose long before the election, the proper forum to decide the matter was the Election Court by way of an election petition under art 191(1)(d) of the Indian Constitution, which corresponds with art 17(1)(g) of the Sarawak Constitution.

[170] It was also held that arts 190(3) and 192(1) of the Indian Constitution, which according to learned counsel for the respondent correspond with art 18(2) and art 19(1) of the Sarawak Constitution, do not apply to a pre-election disqualification and that art 329 of the Indian Constitution which corresponds with art 118 of the Federal Constitution was a bar to the Legislative Assembly's decision.

[171] With all due respect to the majority, the decision in that case must be confined to its own peculiar facts and circumstances. It is to be noted, first and foremost, that the case involved a matter that was not before the legislative assembly, unlike the present case which involved a matter that was to be decided by members of the Dewan within the four walls of the House under art 19(1) of the Sarawak Constitution.

[172] *Saka Venkata Subra Rao* dealt with a matter that was wholly outside the legislative assembly. Further, the case involved a remediable disqualification unlike the present case where the disqualification is not redeemable and is continuing and unforgiveable. As pointed out by learned counsel for the first appellant, what happened in that case was this:

(a) the Election Commission, a statutory authority in New Delhi was restrained by the High Court from enquiring into the respondent's alleged disqualification to be a member of the Madras Legislative Assembly for having been convicted of a criminal offence. There was no issue of justiciability or parliamentary privilege surrounding the core business of the Assembly. By comparison it does on the facts of the present case;

(b) the Election Commission rejected the respondent's application for exemption from disqualification and referred the respondent's disqualification to the Governor of Madras. The Governor, in turn, forwarded the case to the Election Commission for the Commission's opinion as required by art 192 of the Indian Constitution; and

(c) no issue arose as to the privilege of the legislative assembly in carrying out its core functions. It does on the facts of the present case.

[173] Given the divergent factual matrix between *Saka Venkata Subra Rao* and the present appeals, I agree with the appellants that from a precedent point of view, the decision has little or no value. Mary Lim Thiam Suan, JCA in her dissenting judgment had rightly distinguished the factual and legal features of the two cases in paras 302 and 303 of her judgment which are reproduced below:

> [302] Finally, with respect, I must say that I am not persuaded by the decisions of the Supreme Court of India. Those cases do not deal with similar factual matrix or even similar legal provisions. In the light of my observations on citizenship, those cases dealing with remediable disqualification by reason of conviction are not, with respect, of persuasive value.
>
> [303] In view of the stark absence of provisions for the cessation of disqualification by for example an act of renunciation of the foreign citizenship, I find that it would be inappropriate if not wrong for the court to read into art 17(1)(g) such a removal of disqualification or even an exemption or cessation of such disqualification. The presence of express removal or cessation of disqualification in art 17(3) fortifies our view that the absence of such removal or cessation of disqualification is both deliberate and intended under the Sarawak State Constitution and the Federal Constitution.

[174] In rationalising that art 19(1) of the Sarawak Constitution is not intended to cover pre-election disqualification, the majority made comparisons between art XXXIV of the Perak Constitution and art 19(1) of the Sarawak Constitution. This is how Abang Iskandar Abang Hashim JCA dealt with the matter:

> [63] My take after reading the Perak Constitutional provisions is that art XXXIV therein, provides for three very important provisions. First, it says that if a member of the Assembly becomes disqualified for membership of the Assembly, his seat falls vacant. The word 'becomes' connotes a supervening event that happens after the person who is properly qualified is validly elected as a member of the Perak State Assembly. It means that during his tenure as a member of the Perak State Assembly, he incurs the disqualification. Secondly, it makes it very clear that if a person had been wrongly elected as a member of the Perak State Assembly, when in fact he is disqualified from standing for election, then that art XXXIV renders the purported election to be void by operation of law. It even goes further back in time to void the nomination of the disqualified person. In other words, the question of a person

circumstanced as the plaintiff shall have his election be declared as void as a matter of law, both in Perak and the Federal Parliament. A

...

[65] In the absence of such an express provision in the Sarawak Constitution, can the Dewan undertake such an exercise pertaining to the MM dated 12 May 2017 within the ambit of arts 18(1)(a) and 19(1)(a)?. B

[175] The learned judge went on to say at para 75:

[75] It appears to me that arts 16, 17, 18 and 19 of the Sarawak Constitution read together, have created two separate and distinct regimes, in dealing with the issue of disqualification. Articles 16 and 17 deal with disqualifications of a person prior to election or pre-election. Articles 18 and 19 deal with disqualification of an elected member post-election. While I agree with learned counsel for the Defendants that those articles do not employ the words such as 'prior' or 'pre-election' or –post-election', I see nothing wrong in using those words to describe the plausible effects of those articles read together, in that manner. C D

[176] Articles 16 and 18 (sub-para (2)(a) is relevant) of the Sarawak Constitution referred to by the learned judge in the above passage provide as follows: E

Article 16

16 Every citizen of or over the age of twenty-one years who is resident in the State is qualified to be elected as an elected member of the Dewan Undangan Negeri, unless he is disqualified for being such a member by the Federal Constitution or this Constitution or by any such law as is mentioned in Article 17. F

Article 18(2)(a)

(2) An elected member shall also vacate his seat in the Dewan if —

(a) he ceases to be qualified for election as such member of the Dewan; G

[177] The learned judge then concluded at para 83:

The choice of the words used 'has ceased' and 'ceases' connote a situation where the member was properly qualified for election but has since lost that qualified status when, as a member of the Dewan, he committed an act of disqualification under art 18(2)(a). *This scenario did not happen in this case before us.* (Emphasis added.) H

[178] Taking into consideration the unanimous decision of the Court of Appeal that the respondent's disqualification was continuing and unforgivable, I am in agreement with learned counsel for the first appellant that the underlined finding in the passage above in fact reaffirmed the Court of Appeal's decision that the respondent was and remained a person who was disqualified for election to the Dewan. It therefore makes no difference that his I

A disqualification was pre-election or post-election as his status as a disqualified person remained unchanged.

[179] The majority cited with approval the following passage in the academic work by Ahmad Masum in his article titled *Parliamentary Privilege and its Practice in Malaysia: An Overview* [2012] 2 MLJ c in acceding to the respondent's argument that the jurisdiction of the Dewan is confined to post-election disqualification and after the member has been appointed to the House. This is what the learned writer has written at p cvi:

> 'Regardless of the implication of art 53(1) of the Federal Constitution it is of immense importance to note that there are several exceptions to this rule. For example, art 53(1) applies only to post election or post appointment disqualification. Hence, the Houses are the sole determinant of the question of whether an MP, already elected to the Dewan Rakyat, or a Senator already elected or appointed to the Dewan Negara, is eligible to continue to sit in the House.

[180] My reading of the passage is that the writer is absolutely right because art 53(1) of the Federal Constitution, like art 19(1) of the Sarawak Constitution, is aimed at members who are already elected or appointed to the House post-election, just like the respondent in the present appeals, and not at non-members of the Dewan who for obvious reasons do not come under the jurisdiction of the House.

[181] It is clear therefore that the writer's opinion does not support the respondent's argument that the Dewan has no jurisdiction over sitting members who suffer and continue to suffer from an irredeemable and unforgivable pre-election disqualification. In fact, it supports the appellants' argument that it is the Dewan that has the power to determine the question whether a member who has already been elected or appointed to the House is eligible to continue to sit in the House as an elected member.

[182] Even if the writer's opinion coincides with the respondent's argument, for reasons which I have alluded to in dealing with the Dewan's jurisdiction under art 19(1) of the Sarawak Constitution, I am not prepared to accept the opinion if the meaning it intends to convey is that a person who is disqualified for election to the Dewan has the right to remain in the House as an elected member after getting his way into the House unlawfully.

[183] It bears repeating that all three judges of the Court of Appeal had decided, which I fully agree with, that the respondent's disqualification was a continuing disqualification due to the fact that his act of acquiring foreign citizenship was irredeemable and unforgiveable, unlike acts of disqualification envisaged by art 17(3) of the Sarawak Constitution, which provides:

(3) The disqualification of a person under paragraph (d) or paragraph (e) of clause (1) may be removed by the Yang di-Pertua Negeri and shall, if not so removed, cease at the end of the period of five years beginning with the date on which the return mentioned in paragraph (d) of that clause was required to be lodged, or, as the case may be, on the date on which the person convicted as mentioned in paragraph (e) of that clause was released from custody, or the date on which the fine mentioned in that paragraph was imposed; and a person shall not be disqualified under paragraph (g) of clause (1) by reason only of anything done by him before he became a citizen.

[184] The exclusion in art 17(3) of any of the acts of disqualification in para (g) of art 17(1) could not have been an oversight by the framers of the Sarawak Constitution. It was done on purpose. Article 17(1)(g) must therefore be construed to mean that a citizen who has voluntarily acquired foreign citizenship cannot remove the disqualification simply by renouncing that foreign citizenship, as the respondent purported to do in the present case. It is clear that the legislative intent behind art 17(1)(g) is to disqualify for an indefinite period a person who has voluntarily acquired foreign citizenship.

[185] It may appear harsh but a person who aspires to be a member of the Dewan, the highest policy and law making body in the State, must, as of necessity, be a person of unquestionable and undivided loyalty to Malaysia which Sarawak is part of. In fact, the respondent by having acquired the citizenship of Australia was and still is liable to be deprived of his Malaysian citizenship under art 24(1) of the Federal Constitution which provides:

24 (1) If the Federal Government is satisfied that any citizen has acquired by registration, naturalisation or other voluntary formal act (other than marriage) the citizenship of any country outside the Federation, the Federal Government may by order deprive that person of his citizenship.

[186] The deprivation of citizenship is a severe form of action against a citizen for having acquired foreign citizenship. It is a reflection of how seriously the Federal Constitution views the act. The object is to prevent a citizen from acquiring and denouncing his foreign citizenship at will, as and when it suits him, while at the same time refusing to give up his Malaysian citizenship. Either he remains loyal to Malaysia or he gives his loyalty to his adopted foreign country. He cannot have the best of both worlds.

[187] In the present case, it is obvious that before the respondent renounced his Australian citizenship to contest in the Sarawak State General Election, he was a person with dual citizenship, which Malaysia does not recognise. He had even exercised the rights of an Australian citizen by registering as a voter with the Australian Election Commission. His voting district was the State District of Port Macquarie in the Local Government area of Port Macquarie-Hastings.

[188] It may be of interest to know that there are two alternative versions of the Australian pledge of loyalty which a person acquiring the citizenship of Australia can choose from, as follows:

> Pledge 1
>
> From this time forward under God, I pledge my loyalty to Australia and its people, whose democratic beliefs I share, whose rights and liberties I respect and whose laws I will uphold and obey; or
>
> Pledge 2
>
> From this time forward I pledge my loyalty to Australia and its people, whose democratic beliefs I share, whose rights and liberties I respect and whose laws I will uphold and obey.

[189] The respondent's loyalty at all times should be to Malaysia and to Malaysia alone. By voluntarily acquiring Australian citizenship, pledging loyalty to Australia and exercising the rights of an Australian citizen, the respondent's loyalty to Malaysia is questionable, notwithstanding his renunciation of that country's citizenship. The Dewan was therefore justified in disqualifying and removing him from the Dewan as he is a person who is unfit to be a member or to continue to be a member of the House.

[190] The respondent had also been less than candid when he affirmed in a statutory declaration (Borang 5A) on 22 April 2016 as part of the nomination process for the General Election that he had not lost his eligibility to be a member of the Dewan. He knew at the time he signed the statutory declaration that the averment was untrue as he had acquired Australian citizenship before renouncing it, which was a disqualifying act under art 17(1)(g) of the Sarawak Constitution, but he chose to conceal that fact from the knowledge of the Election Commission. That in itself is a serious transgression of the law by a person who aspired to be a member of the highest law making body in the State.

[191] It was further argued by learned counsel for the respondent that if the Dewan were to be allowed to decide on a member's disqualification incurred before his election to the Dewan, this would infringe on the doctrine of separation of powers whereby the Dewan would be encroaching into the powers of the Judiciary, in this case the Election Court. *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561; [2017] 5 CLJ 526 was cited in support.

[192] With due respect to learned counsel, the question of infringing the doctrine of separation of powers does not arise as the power to decide on the qualification of the respondent as a member of the Dewan resides in the Dewan under art 19(1) of the Sarawak Constitution and not the court. It is the court,

if at all, that will be infringing on the doctrine if it were to interfere with the exercise of that power, unless it can be shown that the power had been exercised improperly and in excess of jurisdiction.

[193] Which brings me to art 72(1) of the Federal Constitution, a provision that gives immunity to the validity of proceedings in the Dewan from judicial interference. This is what the article says:

> The validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any court.

[194] Nothing can be clearer than that. Being a provision of the supreme law of the Federation, art 72(1) prevails over any written law passed after Merdeka Day that is inconsistent with it: see art 4(1). If even a written law passed by Parliament or the State Legislature cannot prevail over art 72(1) if it is inconsistent with the provision, it stands to reason that no common law doctrine can prevail over the constitutional provision.

[195] The majority did not seriously and adequately direct their mind to this article because, as mentioned earlier, the focus of their attention was on the issue of jurisdiction. Article 72(1) of the Federal Constitution deals with the issue of justiciability which had been definitively decided by this court in *Teng Chang Khim (appealing as speaker of Selangor State Legislative Assembly) v Badrul Hisham bin Abdullah & Anor* [2017] 5 MLJ 567; [2017] 9 CLJ 630. The case concerns the decision of the Speaker of the Selangor State Assembly to declare vacant a seat because of a State Assemblyman's absence from sittings of the Assembly for six months without the speaker's leave. At para 23 this is what the court said:

> Thus, there can be no doubt that *the business of Parliament and the State Legislative Assemblies are immune from judicial interference*. The courts have no power to interfere with the internal management of Parliament or any State Legislative Assembly. This immunity arises from the doctrine of separation of powers between the three principal organs of government, namely, the Executive, the Legislature and the Judiciary. (Emphasis added.)

[196] In concluding, the court held at para 51:

> In conclusion, we are of the view that in the present case, the speaker was acting within the limits of the power given to him under Article 69 of the Selangor Constitution when he declared the N46 Pelabuhan Klang Constituency seat vacant. Even though the declaration was made outside the SLA proceedings, it was inevitably connected with the essential business of the SLA, made within the parameters set out by Article 69 of the Selangor Constitution, and was made to regulate the internal affairs of the SLA. Consequently, we rule that *the speaker's act is non-justiciable* and the speaker is entitled to the protection of parliamentary

A privilege enjoyed by the SLA as provided for under Article 72(1) of the Federal Constitution. (Emphasis added.)

[197] The court reiterated its earlier decision in *Teng Chang Khim (Chairman of Select Commitee on Competence, Accountability and Transparency and Chairman of Commitee of Privilege Selangor State Assembly) & Ors v Dato' Raja Ideris bin Raja Ahmad & Ors* [2014] 4 MLJ 12; [2014] 3 CLJ 173 that art 72(1) of the Federal Constitution provides an 'absolute immunity' against judicial review of proceedings in the Selangor Legislative Assembly.

[198] *Lim Cho Hock v Speaker, Perak State Legislative Assembly* [1979] 2 MLJ 85 is another case on point. In that case, the speaker applied to set aside the originating summons on the ground that the court had no jurisdiction to hear the assemblyman's application to, inter alia, declare an assemblyman's seat (who happened to be the speaker himself) vacant. In disallowing the claim, Eusoffe Abdulcadeer J (as he then was) held:

> In the light of these constitutional provisions, it is clear that *the two matters raised in these proceedings are for the Assembly to decide and within its exclusive jurisdiction, and not for the courts to determine*. Under the *lex et consuetudo parliamenti*, the Assembly has control over its proceedings, procedure and members and may decide questions as to the qualifications and disqualifications. The provisions in the Federal and State Constitutions I have discussed crystallise and encapsulate this important principle of non-justiciability of its intra-mural activities in the courts which may perhaps be appropriately termed the Bradlaugh principle, highlighted in the *Bradlaugh v Gosset* (1984) 12 (QBD) 271. (Emphasis added.)

[199] It needs to be mentioned also that this court in *Teng Chang Kim* (at para 78 above) had affirmed as correct the decision of the High Court in *Fan Yew Teng v Government of Malaysia* [1976] 2 MLJ 262 where Chang Min Tat J (as he then was) held:

> The issue in his application is the right of the plaintiff to sit in the Dewan Ra'ayat and, in my view and with respect, this issue comes fully within the compass of Article 53 and Article 63. The issue therefore involves the proper and reasonable construction of these Articles. The language is plain and unambiguous. Giving the words therein their plain and grammatical meaning, the decision on this issue is for the House to take, it is final when taken and the validity of the proceedings cannot be questioned in any court ...
>
> On this construction, I must necessarily go on to hold that *this court cannot interfere with the right of the Dewan to decide the question of the plaintiff becoming disqualified for membership* or the corresponding right of the Dewan under the proviso to Article 53 to decide ... (Emphasis added.)

[200] There the High Court was dealing with art 53(1) of the Federal Constitution which is identical though not similar word for word with art

19(1) of the Sarawak Constitution. It reads:

> 53 (1) If any question arises whether a member of a House of Parliament has become disqualified for membership, the decision of that House shall be taken and shall be final:
>
> Provided that this Article shall not be taken to prevent the practice of the House postponing a decision in order to allow for the taking or determination of any proceedings that may affect the decision (including proceedings for the removal of the disqualification).

[201] The effect of art 72(1) of the Federal Constitution on the decision by the Dewan to disqualify and remove the respondent from the House is that the decision 'shall not be questioned in any court'. Thus, so long as the Dewan had acted within the limits of its power, the court would be in breach of art 72(1) of the Federal Constitution if it interfered with the exercise of that power. The court is therefore barred from questioning the validity of the decision taken by the Dewan under art 19(1) of the Sarawak Constitution. The common law doctrine of separation of powers does not and cannot prevail over a constitutional provision like art 72(1) of the Federal Constitution.

[202] The moving of the Ministerial Motion to decide on the qualification of the respondent as a member of the Dewan, the attendant debate on the motion and the voting on the motion were all matters that came within the core business of the Dewan. The whole proceedings of the Dewan therefore attracts privilege and must remain inviolable: see *R v Chaytor* [2011] 1 AC 684; *Teng Chang Kim* (para 195 above); *Yang Dipertua, Dewan Rakyat & Ors v Gobind Singh Deo* [2014] 6 MLJ 812.

[203] Had the majority applied their mind adequately to the issue of justiciability, they would have decided that the decision of the Dewan to disqualify and remove the respondent from the House, taken as it was under and in accordance with art 19(1) of the Sarawak Constitution, was immune from judicial interference by operation of art 72(1) of the Federal Constitution.

[204] Having regard to established canons of constitutional interpretation, the issue of jurisdiction in these appeals ought to have been resolved by giving a proper and reasonable interpretation to art 19(1) read with art 17(1)(g) of the Sarawak Constitution. This is where, with respect, the majority fell into error in failing to apply the principles correctly to the facts of the case, resulting in the emasculation of the Dewan's power to regulate and to decide on issues of membership and qualification under art 19(1) of the Sarawak Constitution.

[205] It is also trite principle that the court should be loathe to read into the

Constitution matters that are not there, such as reading into arts 17(1)(g) and 19(1) of the Sarawak Constitution the dichotomy between pre-election disqualification and post-election disqualification when the two provisions should be read contextually, dynamically and harmoniously. The words 'pre-election', 'post-election' or words to that effect are conspicuous by their absence in the two articles. The learned High Court judge who heard the originating summons was right when he said 'I am not prepared to read into art 17(1)(g) something which is not there'.

[206] Further, the approach taken by the majority in construing the words 'has ceased' and 'ceases' in arts 19(1) and 18(2)(a) respectively of the Sarawak Constitution was too rigid and pedantic which resulted in the majority concluding that arts 16, 17, 18 and 19 are divided into two separate and distinct jurisdictional regimes, that is, pre-election jurisdiction and post-election jurisdiction which inevitably led to the deployment of the illusory pre-election and post-election disqualification dichotomy.

[207] The dichotomy is non existent simply because the Dewan's jurisdiction under art 19(1) is only over members of the Dewan and not over non members who had committed any act of disqualification under art 17(1)(g), which appears to have predominated the majority's mind in grappling with the issue of jurisdiction.

[208] With due respect, the majority's reasoning is flawed as it completely ignores the fact that being a member of the Dewan, the respondent comes under the jurisdiction of the House even though he committed the disqualifying act before he was appointed to the House. It has been held, albeit in the context of a criminal case, that art 17(1)(g) applies to both pre-election disqualification as well as post-election disqualification: see *Fan Yew Teng* (at para 161 above).

[209] Reading art 17(1)(g) of the Sarawak Constitution with art 48(1)(f), art 19(1) and art 53(1) of the Federal Constitution, it is clear that the Dewan was fully clothed with the jurisdiction, authority and power to disqualify and remove the respondent from the Dewan for having acquired Australian citizenship prior to his election and appointment to the House.

[210] Thus, while the majority was right in holding that art 72(1) of the Federal Constitution only applied if the Dewan was seized with jurisdiction to disqualify the respondent under art 19(1) of the State Constitution, they were wrong in finding that the Dewan had no such jurisdiction. The error is serious enough to warrant interference by this court.

[211] I shall now deal with a point that was raised for the first time by

learned counsel for the respondent in these appeals, which is the issue of breach of the rules of natural justice. It constituted a major and substantial part of his argument before us. The contention was that the speaker had blatantly breached the rules of natural justice and that this nullified the decision of the House to disqualify the respondent.

[212] The issue of breach of the rules of natural justice was not a leave question for our determination, nor was it a matter that the Court of Appeal dealt with and decided on. It was for these reasons that learned counsel for the appellants strenuously objected to the issue being raised at the hearing of these appeals but we decided to hear submissions by the parties in view of the general importance of the matter in all the circumstances of the case, including in particular the failure by the majority to consider the issue although vigorously argued by the respondent at the hearing before the Court of Appeal and which the High Court had in fact decided in the respondent's favour.

[213] Recently this court in *Pengusaha, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman bin PS Md Zakariah* [2018] 12 MLJ 49 reiterated the principle that the courts have untrammeled discretion to allow a question of law to be raised for the first time on appeal, in the interest of justice having regard to the circumstances of the case and where it is appropriate to do so. The only fetter I must add is that the discretion must be exercised very sparingly and in the most suitable of cases, for if it were otherwise the statutorily prescribed procedure for appealing to this court will be rendered nugatory and open to perpetual abuse which in turn will cause uncertainty to the finality of litigation.

[214] We were told by learned counsel for the respondent that the speaker constantly interrupted the speech given by the respondent and members of the opposition in the course of the debate on the Ministerial Motion, to the extent of repeatedly switching off their microphones to prevent them from debating the issue. This however is not reflected in the appeal record.

[215] The respondent also took exception to the speaker's refusal to give the respondent sufficient time to prepare for his defence to the Ministerial Motion and that the whole process lasted less than two hours. It was argued that 'the degree of unreasonableness coming from the speaker (against an elected member of DUN) is grossly unjust and unprecedented'.

[216] The learned High Court judge who heard the originating summons was on the same page with the respondent on this issue when he said:

> I agree with the Plaintiff. This Rules of Natural Justice and procedural fairness were not adhered to. By taking an active part in the debate, the speaker had descended into the arena of conflict and debate. He played an active role to promote the

ministerial Motion and in doing so is no longer seen to be acting impartial. The Plaintiff had submitted the speaker had acted as the prosecutor and judge. As can be seen at page 21 of the Hansard the speaker even knew beforehand that the member for Mambong will second the Motion. This implied pre arranged plans and the speaker was aware of it.

[217] Reference was made by learned counsel for the respondent to the judgment of Raja Azlan Shah FJ (as His late Royal Highness then was) in *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152 where the learned judge said:

> In my opinion the rule of natural justice that no man may be condemned unheard should apply to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled 'judicial', 'quasi judicial' or 'administrative' or whether or not the enabling statute makes provision for a hearing.

[218] We were also referred to art 135(2) of the Federal Constitution which provides that no member of the public services shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard which according to learned counsel fortified his argument on the importance of giving the right of hearing to the respondent before disqualifying and removing him from the Dewan.

[219] It was further contended that since the Court of Appeal did not address the issue of natural justice and made no finding on it, the Court of Appeal must be taken to have agreed with the High Court's decision that the speaker had acted unfairly, thus rendering the Dewan's decision bad in law and unconstitutional.

[220] With due respect to learned counsel for the respondent, his reliance on *Ho Kwan Seng* and art 135(2) of the Federal Constitution is misconceived. *Ho Kwan Seng* involved an administrative action by an administrative body whilst art 135(2) of the Federal Constitution concerns the procedure for the dismissal of public servants who comprised the following: the armed forces; the judicial and legal service; the general public service of the Federation; the police force; the joint public services mentioned in art 133; the public service of each State; and the education service.

[221] Obviously, the speaker is not a public servant under the Federal Constitution and in any event the decision to disqualify the respondent was not his decision. It was the collective decision of the Dewan by a majority vote of 70 to 10. More importantly, the decision of the Dewan was not an administrative decision by an administrative body over an administrative officer but an exercise of power by the legislative body over a member of the

Dewan under art 19(1) of the Sarawak Constitution which is shielded from judicial interference by art 72(1) of the Federal Constitution.

[222] Even if the rule of natural justice applies, the complaint of its breach by the respondent is not borne out by the facts. It is true that the speaker made certain remarks in the course of the debate on the Ministerial Motion but I do not find anything wrong or illegal with that. It is not as if the speaker had hijacked the whole proceedings without giving members of the Dewan the opportunity to speak before he put the Ministerial Motion to a vote and before announcing the Dewan's decision to disqualify the respondent and to order his removal from the House. In any case, it is unrealistic to expect the speaker to keep a stony silence while members of the Dewan were debating the motion, which in this case was heated as the *Hansard* shows. It was the speaker's job to control proceedings in the Dewan.

[223] It is of paramount importance to bear in mind that proceedings in the Dewan are not proceedings in a court of law where strict adherence to the law of evidence and procedure must be observed. The Dewan has its own rules and regulations and the speaker is vested with the power to enforce those rules and regulations to ensure that proceedings in the Dewan are conducted in an orderly manner. It is far fetched in my view for learned counsel to suggest that the 70 State Assemblymen who voted in favour of disqualifying the respondent had been influenced by the speaker's remarks during the course of the debate on the Ministerial Motion. There is in any event no evidence to support the suggestion.

[224] The record of appeal at pp 668–676 of Vol 4(1) shows that the respondent was given every opportunity by the speaker to defend himself in answer to the Ministerial Motion. The fact of the matter is he took active part in the proceedings after the speaker had asked if anyone from the opposition wanted to speak.

[225] The *Hansard* further shows that the respondent had duly exercised his right to give his side of the story after Dato Sri Wong Soon Koh finished giving his speech in support of the Ministerial Motion. This was followed by Chong Chieng Jen from the opposition who too gave a speech in defence of the respondent. In the circumstances there was no evidential basis for the respondent to complain that he was not given the right of hearing, in breach of the rules of natural justice.

[226] On the respondent's complaint that the speaker refused to give him sufficient time to prepare for his defence to the Ministerial Motion, I do not think that by itself had occasioned any miscarriage of justice. The issue before the Dewan was the very same issue that was ventilated before the Election

Court in the election petition filed by Hii King Chiong. The respondent was the defendant in that action. Therefore, he must have had all the facts, including the relevant documents, when facing the Ministerial Motion even on short notice.

[227] The question for the respondent to answer in the proceedings before the Dewan was whether he had acquired the citizenship of Australia before he stood for election in the State Constituency of N17 Pujut. It was a simple question that required a simple answer. Yet, instead of answering the question with a yes or no answer during the debate on the Ministerial Motion, the respondent challenged Dato Sri Wong Soon Koh, the Minister who moved the motion, to ask the same question to other members of the Dewan, specifically the member for Batu Kawa.

[228] It is obvious that the respondent refused to admit that he had indeed voluntarily applied for and acquired Australian citizenship before standing for election in the State Constituency of N17 Pujut. But for reasons that are not entirely clear, he is no longer denying this fact. The respondent's refusal to admit having acquired Australian citizenship can be seen in the following exchanges between him and Dato Sri Wong Soon Koh as recorded in the *Hansard* and which is reproduced at p 673 of the appeal record:

> Minister for Finance II and Minister for International Trade and Commerce (YB Dato Sri Wong Soon Koh): Sit down, listen to me. As has been pointed out, that this House has the right to make this decision. Now, I asked the Member for Pujut, did you acquire Australian citizenship? Did you? Answer me ... No, you answer me. Did you acquire Australian citizenship? You answer that. You answer me.
>
> Tuan Speaker: Ahli Yang Berhormat for Pujut, you answer.
>
> Minister for Finance II and Minister for International Trade and Commerce (YB Dato Sri Wong Soon Koh): Did you acquire Australian citizenship? It is a straightforward question.
>
> YB Dr Ting Tiong Choon: Tuan Speaker and Ahli Yang Berhormat for Bawang Assan and all members in this House. I came to Sarawak a few years ago. I have all this time intended to come back to Sarawak.
>
> Minister for Finance II and Minister for International Trade and Commerce (YB Dato Sri Wong Soon Koh): No. no. no. I want you to answer my question. Okay. Did you acquire Australian citizenship? Yes or no. Simple answer. Yes or no?
>
> YB Dr Ting Tiong Choon: Would you ask any other members of this august House, do they have citizenship in other countries?
>
> Minister for Finance II and Minister for International Trade and Commerce (YB Dato Sri Wong Soon Koh): No, no. No. I asked you.
>
> YB Dr Ting Tiong Choon: I don't have to prove that to you. You need to show. You make the allegations, you need to tell me that I have Australian citizenship

otherwise you need to ask all the other Dewan Members whether they have other foreign citizenship. Do you dare to ask our Honourable Member for Batu Kawa whether he has an Australian citizen? So, I think ... (Interruption). Just listen to me. You have plenty of chances.

Tuan Speaker: This is not a motion against Honourable Member for Bawang Assan. This is a motion against you. Did you or did you not acquire the Australian citizenship?

YB Dr Ting Tiong Choon: That is not the Motion. That is not the Motion. Tuan Speaker: That is central to the Motion. Did you or did you not acquire?

YB Dr Ting Tiong Choon: I said it many times. All those presented by Honourable member of Bawang Assan, a lot of them are not evidence. No one in the right mind will actually believe this sort of evidence. It is contradicting.

Tuan Speaker: Proceed.

[229] As for learned counsel's contention that the Court of Appeal must be taken to have agreed with the High Court decision when it did not address the issue of natural justice and made no finding on it, I do not think the argument can be stretched that far. In the first place, the failure by the Court of Appeal to affirm the decision of the High Court on the issue of natural justice was a failure that adversely affected the respondent more than it affected the appellants.

[230] The appellants' appeals were against the whole of the decision of the Court of Appeal and this should be wide enough to cover the High Court's finding that the speaker had breached the rules of natural justice. It was the respondent who should, in the circumstances, have cross-appealed against such failure by the Court of Appeal, or at the very least to apply for the issue to be added as a leave question at the leave stage. Yet for some unexplained reasons, he chose not to.

[231] For all the reasons aforementioned, my answers to the leave questions are as follows:

Question 1 — Affirmative, that is the Dewan has the power under art 19(1) of the Sarawak Constitution to make a decision on the continued membership of an elected member whenever a question is raised in the Dewan as to whether that member is qualified for election to the Dewan under art 17(1)(g) of the Sarawak Constitution.

A Question 2 — Negative, that is the business or proceedings of the Dewan (including but not limited to the Ministerial Motion on 12 May 2017) is not justiciable, in view of the provisions of inter alia art 19(1) of the Sarawak Constitution read with art 72(1) of the Federal Constitution.

B Question 3 — Negative, that is upon a proper interpretation of art 17(1)(g) of the Sarawak Constitution, a disqualification for election to the Dewan resulting from voluntary acquisition of foreign citizenship and the exercise of rights accorded to a foreign citizen in that foreign country, cannot be removed and ceased in the absence of provision in art 17(3) or any art of the Sarawak Constitution for the removal or cessation of such disqualification.

C Question 4 — Negative, that is there is no conflict between art 17(1)(g) and art 19(1) of the Sarawak Constitution and art 118 of the Federal Constitution.

D Question 5 — Negative, that is an election petition pursuant to art 118 of the Federal Constitution is not the only mode that can be utilised to challenge the appointment or election of a member of the Dewan.

E Question 6 — Negative, that is a Malaysian citizen who had acquired a foreign citizenship but renounced it before the nomination of an election is not qualified to be nominated as a candidate for an election in the light of art 17(1)(g) of the Sarawak Constitution.

F Question 7 — Affirmative for the first part, that is the Dewan has the jurisdiction to decide on the disqualification of an elected member who had previously acquired a foreign citizenship though renounced it before the nomination of an election and negative for the second part, that is such decision of the Dewan is not justiciable in the light of art 19 of the Sarawak Constitution.

G **[232]** In the circumstances, I allow the appeals with no order as to costs. The decision of the Court of Appeal is set aside and the decision of the Dewan dated 12 May 2017 is restored.

H **[233]** My learned brothers and sisters have read this judgment in draft. Except for the learned Chief Justice and the learned Chief Judge of Sabah and Sarawak who are dissenting, the rest of my brothers and sisters concur with the judgment.

I *Appeals allowed by majority, decision of the Court of Appeal set aside; and decision of the Dewan restored.*

Reported by Ashok Kumar